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Publication

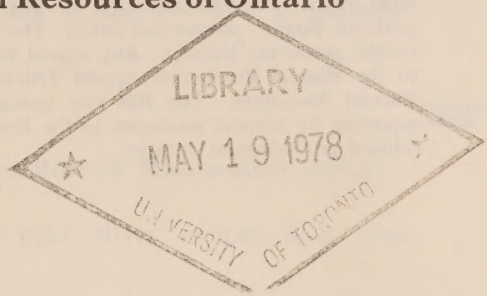
BILL 88

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

111

**An Act to conserve
the Mineral Resources of Ontario**



MR. WILDMAN

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of the Bill is to ensure the conservation and wise management of the mineral resources of Ontario. The Bill requires that all mineral production operations in Ontario be licensed by the Ontario Minerals Management Board. The Bill establishes the Board and contains provisions setting forth the Board's powers and duties. The Board has authority to issue and revoke producing licences. Any appeal from a decision of the Board lies to the Mineral Production Appeal Tribunal and then to the Minister of Natural Resources. The Bill also contains provisions requiring regular reporting by mineral producers to the Board concerning several aspects of mineral production in Ontario.

BILL 88

1978

An Act to conserve the Mineral Resources of Ontario

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Board" means the Minerals Management Board;
- (b) "minerals" means gold, silver, copper, lead, iron, nickel and coal;
- (c) "Minister" means the Minister of Natural Resources;
- (d) "person" means an individual, corporation, syndicate, consortium or trust;
- (e) "produce" means mine, extract or otherwise obtain by any mode or method a mineral from the earth, rock, or any mineral-bearing substance;
- (f) "producer" means the holder of a producing licence issued in accordance with this Act;
- (g) "regulations" means regulations made under this Act;
- (h) "Tribunal" means the Mineral Production Appeal Tribunal.

2. The purposes of this Act are,

Purposes

- (a) to effect the conservation of and wise management of the mineral resources of Ontario;

(b) to provide for the appraisal of the extent and value of the reserves and productive capacity of mineral resources in Ontario;

(c) to provide for the appraisal of the requirements for mineral resources in Ontario and of markets outside Ontario for Ontario mineral resources.

Composi-
tion of
Board

3.—(1) A board to be known as the Minerals Management Board is hereby established and shall be composed of such members appointed by the Lieutenant Governor in Council as the Lieutenant Governor in Council may consider necessary.

Chairman
and vice-
chairman

(2) The Lieutenant Governor in Council shall designate a chairman and one or more vice-chairmen from among the members of the Board.

Acting
chairman

(3) In the case of the absence or inability to act of the chairman or of there being a vacancy in the office of the chairman, and in the absence of the chairman and vice-chairman or vice-chairmen from any meetings of the Board, the members of the Board present at the meeting shall appoint an acting chairman who shall act as and have all the powers of the chairman during the meeting.

Term of
office

(4) Members of the Board shall hold office during pleasure.

Expert
assistance

(5) The Board may appoint from time to time one or more persons having technical or special knowledge of any matter to inquire into and report to the Board and to assist the Board in any capacity in respect of any matter before it.

Exercise of
powers

(6) The powers of the Board shall be exercised by resolution and the Board may pass resolutions governing the calling of and the proceedings at meetings and specifying the powers and duties of employees of the Board and generally dealing with the carrying out of its function.

Duties

(7) The Board shall perform such duties as are assigned to it by or under this and any other Act and shall administer and enforce this Act and the regulations.

Prohibition
of interest

4. No member of the Board appointed under section 3 shall have a direct pecuniary interest in any mineral property or in any business or undertaking engaged in any phase of the production, distribution or sale of a mineral resource.

Producing
licence
required

5.—(1) On and after the day this Act comes into force, no person shall produce a mineral resource in Ontario unless

that person is the holder of a producing licence issued by the Board, which licence shall be in such form and subject to such conditions as the Board considers appropriate but a licence shall not be valid for a period longer than five years from the date of issuance.

(2) An application for a producing licence to produce minerals in Ontario shall be accompanied by a proposed minerals management plan, which plan shall contain a detailed description of the applicant's proposed production operation and without limiting the generality of the foregoing shall include,

- (a) a description of the production site;
- (b) the proposed level and rate of production;
- (c) the minerals and grades of minerals proposed to be produced;
- (d) the sales commitments of the applicant and the amount of the proposed production under contract to be sold;
- (e) the names of persons who have contracted to purchase the mineral and the locations to which shipments are likely to be made;
- (f) a description of proposed mineral exploration activity, if any, occurring concurrently with the producing of the mineral resource.

(3) The Board may enter into a minerals management agreement with an applicant for a producing licence when the Board is satisfied that the production proposed by the applicant is consistent with the principles of conservation and wise management of the mineral resource and the provisions of any such agreement may constitute the terms and conditions upon which the issuance of a producing licence is based.

6.—(1) Every person who produces minerals in Ontario shall file with the Board a report on production activity for each six month period during the calendar year stating in respect of the period,

- (a) the amount of minerals and grades of minerals produced;
- (b) the volume of sales of minerals made;

(c) the amount of each type of minerals purchased by each purchaser and the location to which the minerals were shipped;

(d) the price at which the minerals produced were sold;

(e) the inventory level for the minerals at the end of the month;

(f) an estimate of the amount of reserves remaining,

and the report shall be filed with the Board within three months of the last day of the six month period for which the report is made.

Production
forecasts

(2) Every person who produces minerals in Ontario shall file with the Board every year a report containing,

(a) a forecast of the production requirements, the cost of production and the selling price of the mineral or minerals produced for the six month period following the month during which the report is filed; and

(b) a summary of mineral exploration and development activity during the six month period preceding the month during which the report is filed.

Idem

(3) The Board may, by regulation, require the filing of such other information at such intervals as the Board considers necessary to carry out the purposes of this Act.

Imposition
of new
terms and
conditions

7.—(1) The Board may at any time review a producing licence on its own initiative and attach such further terms and conditions as it considers proper to give effect to the purposes of this Act.

Removal of
terms and
conditions

(2) The Board may, on the application of the holder of a producing licence, remove any term or condition to which the licence is made subject where there is a change of circumstances.

Revocation,
suspension
of licence

(3) The Board may suspend or revoke a producing licence where the producer is in breach of a term or condition of the licence.

Voluntary
cancellation

(4) The Board may cancel a producing licence upon the request in writing of the producer in the prescribed form surrendering the licence.

8.—(1) Where the Board decides,

Notice of
proposed
Board
decision

- (a) to refuse to issue a producing licence;
- (b) to suspend or revoke a producing licence;
- (c) to attach terms or conditions to a producing licence that constitute a variation of the minerals management plan proposed by the applicant;
- (d) to refuse to remove a term or condition of a producing licence,

it shall serve notice of its decision together with written reasons therefor on the applicant or holder of the licence affected.

(2) Where the Board proposes to suspend or revoke a producing licence, the Board may, where the Board considers it to be necessary in the public interest, by order temporarily suspend the licence and the order shall take effect three months after the day the order is made but where a hearing is required the order ceases to take effect until the hearing is concluded.

Interim
suspension

9.—(1) Where a person is aggrieved by a decision of the Board in respect of a producing licence, the person is entitled to a hearing and may require a hearing by the Board by mailing or delivering to the Board within fifteen days after receiving notice of the Board decision a notice in writing requiring a hearing by the Board.

Require-
ment of
hearing

(2) Where the Board is required to hold a hearing, the chairman of the Board shall refer the matter to two or more members of the Board designated by the chairman who shall constitute the Board for the purposes of hearing and decision.

Members
holding
hearing

(3) The Board shall fix a time and place for the hearing of the application and shall at least ten days before the day fixed cause notice thereof to be given to the applicant, and to any other person appearing to the Board to have an interest in the application.

Notice of
hearing

(4) Every person to whom notice of a hearing is given and any other person added by the Board or who requests an opportunity to present an opinion on the matter to the Board is a party to the proceedings.

Parties

(5) Each member of the Board has the power to administer oaths and affirmations for the purpose of any of its proceedings.

Oaths

Decision
and
reasons

(6) The Board shall hold the hearing and give its decisions and reasons therefor in writing to the parties to the proceedings.

Publica-
tion in
Ontario
Gazette

(7) Every order suspending or revoking a producing licence under section 8 and every notice of hearing given under section 9 shall be published in *The Ontario Gazette* by the Board within fourteen days from the day of its issuance.

Investi-
gation by
Board

10.—(1) Where, upon a statement made under oath, the Board believes on reasonable and probable grounds that a person has contravened,

(a) a provision of this Act or the regulations; or

(b) a term or condition of a producing licence issued under this Act,

the Board may, by order, appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulations or term or condition of the producing licence has occurred and the person appointed shall report the result of his investigation to the Board.

Powers of
investi-
gator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

(a) upon production of his appointment, enter at any reasonable time the premises of such person, not including any premises or part thereof occupied as living accommodation, and examine books, papers, documents and things relevant to the subject-matter of the investigation; and

(b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation. Obstruction of investigator

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under clause *a* of subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night. Search warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause *a* of subsection 2 or subsection 4 relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated. Removal of books, etc.

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents. Admissibility of copies

11. Any person designated by the Board in writing may at any reasonable time enter upon any premises or place in respect of which a producing licence is issued to make an inspection for the purpose of ensuring that the provisions of this Act and the regulations and the terms and conditions of the licence are being complied with and no person shall obstruct the person inspecting or withhold Inspections

or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

Special
audit

12.—(1) The Board may at any time authorize and direct a representative of the Board appointed for that purpose to enter upon any premises where the books, accounts or records of or pertaining to any licensed producer are kept or may be, and to inspect, study, audit, take extracts from such books, accounts or other records, and may, upon giving a receipt therefor, remove any such material that relates to the purpose of the inspection for the purpose of making a copy thereof, but such copying shall be carried out with reasonable dispatch and the material in question promptly returned to the person being inspected and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

Admissi-
bility in
evidence

(2) Any copy made as provided in subsection 1 and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original.

Matters
confidential

13. Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under this Act, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

Mineral
Production
Appeal
Tribunal

14.—(1) The Mineral Production Appeal Tribunal is hereby established and shall be composed of not more than seven members who shall be appointed by the Lieutenant Governor in Council and the Lieutenant Governor in Council shall appoint one of such members as chairman and one or more of them as vice-chairmen.

Term of
office

(2) The members of the Tribunal shall be appointed to hold office for a term not exceeding five years and may be

reappointed for further successive terms not exceeding five years each.

(3) The chairman shall have general supervision and direction over the conduct of the affairs of the Tribunal and shall arrange the sittings of the Tribunal and assign members to conduct hearings as circumstances require. Duties of chairman

(4) Three members of the Tribunal constitute a quorum. Quorum

(5) The Tribunal shall prepare and periodically publish a summary of its decisions and the reasons therefor. Publication of decisions

(6) Each member of the Tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings. Oaths

15.—(1) Any party to a hearing before the Board under section 9 who is aggrieved by the decision of the Board may require a hearing by the Tribunal by mailing or delivering to the Board and the Tribunal a notice in writing requesting a hearing by the Tribunal within fifteen days after he is served with the decision of the Board. Hearing by Tribunal

(2) Where an applicant or holder of a producing licence requires a hearing by the Tribunal in accordance with subsection 1, the Tribunal shall appoint a time for and hold the hearing and may order, confirm, alter or revoke the decision of the Board or direct the Board to take such action as the Tribunal considers the Board ought to take in accordance with this Act and for such purposes the Tribunal may substitute its opinion for that of the Board. Powers of Tribunal

(3) The Tribunal may attach such terms and conditions to its order or to the producing licence as it considers proper to give effect to the purposes of this Act. Conditions of order

(4) The Board, the applicant or the holder of the producing licence who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. Parties

16.—(1) A member of the Tribunal holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and after having provided an opportunity for all parties to participate, but the Tribunal may seek legal advice from an adviser in- Members holding hearing not to have taken part in investigation, etc.

dependent of the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Examina-
tion of
docu-
mentary
evidence

(2) An applicant or producer who is a party to proceedings under section 13 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced, or any report the content of which will be given in evidence at the hearing.

Recording
of
evidence

(3) The oral evidence taken before the Tribunal shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings
of fact

(4) The findings of fact of the Tribunal pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

1971, c. 47

Only mem-
bers at
hearing to
participate
in decision

(5) No member of the Tribunal shall participate in a decision of the Tribunal pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Tribunal shall be given unless all members so present participate in the decision.

Release of
docu-
mentary
evidence

(6) Documents and things put in evidence at a hearing of the Tribunal shall, upon the request of the person who produced them, be released to him by the Tribunal within a reasonable time after the matter in issue has been finally determined.

Extension
of time for
notice
requiring
hearing

(7) Notwithstanding any limitation of time for the giving of a notice requiring a hearing by the Tribunal and where it is satisfied that there are *prima facie* grounds for granting relief and that there are reasonable grounds for applying for the extension, the Tribunal may extend the time for giving the notice either before or after expiration of the time so limited and may give such directions as it considers proper consequent upon such extension.

Reasons

(8) The Tribunal shall give its decision and reasons therefor in writing to the parties to the proceedings and shall provide a copy of each decision to the Minister.

Stay

(9) An order of the Tribunal revoking or suspending a producing licence takes effect immediately but, where an appeal is made to the Supreme Court, the court may grant a stay until the disposition of the appeal.

17.—(1) Any notice required to be given or served in connection with proceedings of or before the Board or the Tribunal is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made. Service

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. Where service deemed to be made

(3) Notwithstanding subsections 1 and 2, the Tribunal may order any other method of service in respect of any matter before the Tribunal. Exception

18. Except as otherwise provided in this Act, *The Statutory Powers Procedure Act, 1971* applies to the proceedings of the Board and the Tribunal. Application of 1971, c. 47

19.—(1) Within twenty-eight days after receipt by the Minister of a decision of the Tribunal or within such longer period as may be determined by the Minister within such twenty-eight day period, the Minister with the approval of the Lieutenant Governor in Council or such Minister of the Crown as the Lieutenant Governor in Council may designate, may, Variation of decisions by Minister

- (a) vary the whole or any part of the decision;
- (b) substitute for the decision of the Tribunal such decision as the Minister considers appropriate;
- (c) by notice to the Board, require the Board to hold a new hearing of the whole or any part of the matter and reconsider its decision.

(2) Subject to subsection 3, a decision of the Tribunal is final after the expiration of the period or periods mentioned in subsection 1 unless, pursuant to subsection 1, the decision is varied or a decision is substituted for the decision of the Tribunal or a new hearing is required. Idem

(3) A decision of the Tribunal that has been varied pursuant to clause *a* of subsection 1 or a decision that has been substituted for the decision of the Tribunal pursuant to clause *b* of subsection 1 is final. Idem

Offence

20.—(1) Every person who,

- (a) contravenes any provision of this Act or the regulations;
- (b) knowingly fails to comply with a term or condition of a producing licence issued under this Act;
- (c) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations,

and every director or officer of a corporation or other person who knowingly concurs in such contravention, failure or furnishing is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Idem

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

Idem

(3) No proceeding to prosecute under this section shall be instituted except with the consent of the Minister.

Regulations

21. Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations,

- (a) governing and providing for the issuance of producing licences;
- (b) requiring the payment of fees in respect of applications for and the issuance of producing licences;
- (c) requiring the filing of such information and returns with the Board as the Board considers necessary to carry out the purposes of this Act;
- (d) prescribing rules for proceedings before the Board or the Tribunal;
- (e) exempting any person, class of persons, undertaking or class of undertakings from the provisions of this Act, the regulations or any section or part of a section thereof;
- (f) prescribing forms for the purpose of this Act and providing for their use.

22. This Act comes into force on a day to be named by ^{Commence-}proclamation of the Lieutenant Governor. ^{ment}

23. The short title of this Act is *The Ontario Minerals* ^{Short title}
Conservation Act, 1978.

Bill 88

An Act to conserve
the Mineral Resources of Ontario

1st Reading

May 11th, 1978

2nd Reading

3rd Reading

MR. WILDMAN

(Private Member's Bill)

CH240
XB
- BSG

Government
Publications

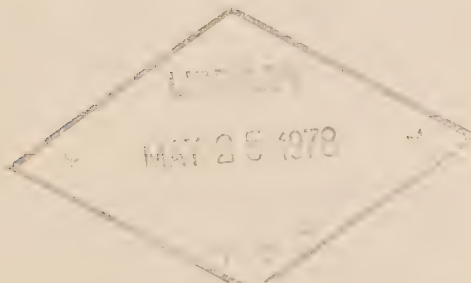
BILL 89

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting French Language Services
in Ontario**

MR. ROY



EXPLANATORY NOTE

This Bill places a duty on the Government of Ontario to provide, as of right, public services in the French language to the citizens of Ontario subject to certain conditions set out in the Bill. The Bill also establishes the office of the French Language Services Co-ordinator and the Language Services Board to aid in improving the availability of French language services in Ontario.

BILL 89

1978

An Act respecting French Language Services in Ontario

WHEREAS the French language is an historic, honoured Preamble
and constitutional language of Canada, and whereas
there is need to give legal definition to the rights of citizens
to have Ontario Government services provided in French;

Therefore, Her Majesty, by and with the advice and consent
of the Legislative Assembly of the Province of Ontario, enacts
as follows:

1. In this Act,

Interpre-
tation

- (a) "Board" means the Language Services Board estab-
lished under section 5;
- (b) "Co-ordinator" means the French Language Ser-
vices Co-ordinator appointed under section 6;
- (c) "Government of Ontario" includes every board,
commission, corporation and agency thereof.

2. Subject to section 7, the Government of Ontario shall Government
to provide
French
language
services
provide educational, judicial, health, social, municipal and
other public services in Ontario in the French language in
accordance with this Act and with recommendations con-
tained in the report of the Language Services Board or a
report of the Co-ordinator of French Language Services.

3. The English and French languages may be used by any Legislative
Assembly
person in any proceedings of the Legislative Assembly or a
committee thereof, and the Order Papers, Votes and Pro-
ceedings, records and reports of the Assembly or any com-
mittee thereof may be printed in both the English and French
languages, and any Bill or motion may be introduced in both
the English and French languages, and any Act of the
Legislative Assembly may be printed and published in both
the English and French languages.

Statutes

4.—(1) Subject to sections 6 and 7, and upon the revision of the Statutes of Ontario in 1980, those Statutes so designated by the Co-ordinator of French Language Services shall be printed and published in English and French and thereafter the annual Statutes of Ontario shall be printed and published in English and French.

Statutes

(2) Any regulation, proclamation or notice issued in Ontario may be issued in both English and French and where a regulation, proclamation or notice is issued in both languages and is required to be printed in *The Ontario Gazette*, the regulation, proclamation or notice shall be published accordingly in both languages.

Language
Services
Board

5.—(1) The Language Services Board is hereby established and shall be composed of the Co-ordinator of French Language Services, the Chairman of the Civil Service Commission and three members appointed by the Lieutenant Governor in Council of whom at least two shall be persons who are not members of the public service at the time of appointment.

Chairman

(2) The Lieutenant Governor in Council shall appoint one of the members of the Board as chairman who shall be a person capable of speaking and understanding the English and French languages.

Term of
Office

(3) The members of the Board shall be appointed to hold office for a term of one year commencing on the day of the appointment of the chairman and the Board is terminated on the day on which the terms of office expire.

Duties

(4) The Language Services Board shall,

- (a) review the availability of French language services in all parts of Ontario;
- (b) recommend and designate areas of the Province of Ontario in which government services shall be provided in both English and French;
- (c) recommend the extent to which French language services should be provided in those parts of the Province of Ontario not designated under clause *b*;
- (d) recommend a time schedule for implementing the recommendations in clauses *b* and *c*, and the Board shall report its findings and recommendations to the Premier before the day on which the Board is terminated and the Premier shall forthwith lay the report before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

6.—(1) A Co-ordinator of French Language Services shall be appointed by the Lieutenant Governor in Council who shall have the rank of Deputy Minister and who shall be responsible for supervising and co-ordinating the provision of French Language Services in Ontario.

Co-ordinator of French Language Services

(2) A French Language Services Committee is hereby established to be composed of one representative from each Ministry of the Government to assist the French Language Services Co-ordinator in carrying out his duties under this Act.

French Language Services Committee

(3) The Co-ordinator after the close of each calendar year shall submit to the Premier an annual report containing an assessment of the availability of French language services in Ontario and any recommendations the Co-ordinator may feel are desirable in order to extend or improve the availability of French language services in Ontario and the Premier shall forthwith lay the report before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

Co-ordinator's report

7.—(1) The Government shall implement all recommendations contained in the report of the Language Services Board or a report of the Co-ordinator unless within six months of the day that the report of the Board or Co-ordinator is submitted to the Premier, the Government lays before the Assembly a statement of intention indicating the recommendations which the Government does not intend to implement.

Statement of intention

(2) The report of the Board, every report of the Co-ordinator and every statement of intention provided for in section 7 (1) stands permanently referred to a Standing Committee of the Legislature for the purposes of examination and review and the Committee shall, at least once in every five year period, review and make recommendations concerning amendments to the Act or changes in administrative procedures designed to improve the availability of French language services in Ontario.

Standing Committee

8.—(1) Nothing in this Act shall be construed as authorising a reduction in the availability of French language services existing on the day this Act comes into force.

Saving

(2) Nothing in this Act shall be construed to prohibit the Government from providing French language services where the provision of such services has not been recommended or considered by the Language Services Board or the Co-ordinator.

Idem

Courts (3) Court proceedings and hearings shall be conducted in
 1978, c. ... the French language in accordance with *The Judicature
 Amendment Act, 1978* as amended from time to time.

Commence- **9.** This Act comes into force on the day it receives Royal
 ment Assent.

Short title **10.** The short title of this Act is *The Ontario French
 Language Services Act, 1978*.

An Act respecting
French Language Services
in Ontario

1st Reading

May 16th, 1978

2nd Reading

3rd Reading

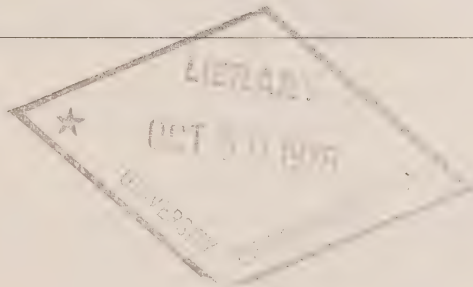
MR. ROY

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting French Language Services
in Ontario**

MR. ROY



(Reprinted as amended by the Administration of Justice Committee)

EXPLANATORY NOTE

This Bill places a duty on the Government of Ontario to provide, as of right, public services in the French language to the citizens of Ontario subject to certain conditions set out in the Bill. The Bill also establishes the office of the French Language Services Co-ordinator and the Language Services Board to aid in improving the availability of French language services in Ontario.

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to provide
French
language
services
ensure the provision of educational, judicial, health, social,
municipal and other public services in Ontario in the French
language in accordance with this Act and with recommenda-
tions contained in the report of the Language Services Board
or a report of the Co-ordinator of French Language Services.

3. The English and French languages may be used by any Legislative
Assembly
person in any proceedings of the Legislative Assembly or a
committee thereof, and the Order Papers, Votes and Pro-
ceedings, records and reports of the Assembly or any com-
mittee thereof may be printed in both the English and French
languages, and any Bill or motion may be introduced in both
the English and French languages, and any Act of the
Legislative Assembly may be printed and published in both
the English and French languages.

- Statutes **4.**—(1) Subject to sections 6 and 7, and upon the revision of the Statutes of Ontario in 1980, those Statutes so designated by the Co-ordinator of French Language Services shall be printed and published in English and French and thereafter the annual Statutes of Ontario shall be printed and published in English and French.
- Statutes (2) Any regulation, proclamation or notice issued in Ontario may be issued in both English and French and where a regulation, proclamation or notice is issued in both languages and is required to be printed in *The Ontario Gazette*, the regulation, proclamation or notice shall be published accordingly in both languages.
- Language
Services
Board **5.**—(1) The Language Services Board is hereby established and shall be composed of the Co-ordinator of French Language Services, the Chairman of the Civil Service Commission and three members appointed by the Lieutenant Governor in Council of whom at least two shall be persons who are not members of the public service at the time of appointment.
- Chairman (2) The Lieutenant Governor in Council shall appoint one of the members of the Board as chairman who shall be a person capable of speaking and understanding the English and French languages.
- Term of
Office (3) The members of the Board shall be appointed to hold office for a term of one year commencing on the day of the appointment of the chairman and the Board is terminated on the day on which the terms of office expire.
- Duties (4) The Language Services Board shall,
- (a) review the availability of French language services in all parts of Ontario;
 - (b) recommend and designate areas of the Province of Ontario in which government services shall be provided in both English and French;
 - (c) recommend the extent to which French language services should be provided in those parts of the Province of Ontario not designated under clause *b*;
 - (d) recommend a time schedule for implementing the recommendations in clauses *b* and *c*, and the Board shall report its findings and recommendations to the Premier before the day on which the Board is terminated and the Premier shall forthwith lay the report before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

6.—(1) A Co-ordinator of French Language Services shall be appointed by the Lieutenant Governor in Council who shall have the rank of Deputy Minister and who shall be responsible for supervising and co-ordinating the provision of French Language Services in Ontario.

Co-ordinator of French Language Services

(2) A French Language Services Committee is hereby established to be composed of one representative from each Ministry of the Government to assist the French Language Services Co-ordinator in carrying out his duties under this Act.

French Language Services Committee

(3) The Co-ordinator after the close of each calendar year shall submit to the Premier an annual report containing an assessment of the availability of French language services in Ontario and any recommendations the Co-ordinator may feel are desirable in order to extend or improve the availability of French language services in Ontario and the Premier shall forthwith lay the report before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

Co-ordinator's report

7.—(1) The Government shall implement all recommendations contained in the report of the Language Services Board or a report of the Co-ordinator unless within six months of the day that the report of the Board or Co-ordinator is submitted to the Premier, the Government lays before the Assembly a statement of intention indicating the recommendations which the Government does not intend to implement.

Statement of intention

(2) The report of the Board, every report of the Co-ordinator and every statement of intention provided for in section 7 (1) stands permanently referred to a Standing Committee of the Legislature for the purposes of examination and review and the Committee shall, at least once in every five year period, review and make recommendations concerning amendments to the Act or changes in administrative procedures designed to improve the availability of French language services in Ontario.

Standing Committee

8.—(1) Nothing in this Act shall be construed as authorising a reduction in the availability of French language services existing on the day this Act comes into force.

Saving

(2) Nothing in this Act shall be construed to prohibit the Government from providing French language services where the provision of such services has not been recommended or considered by the Language Services Board or the Co-ordinator.

Idem

Courts
1978, c. 26

(3) Court proceedings and hearings shall be conducted in the French language in accordance with *The Judicature Amendment Act, 1978* as amended from time to time.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Ontario French Language Services Act, 1978*.

An Act respecting
French Language Services
in Ontario

1st Reading

May 16th, 1978

2nd Reading

June 1st, 1978

3rd Reading

MR. ROY

*(Reprinted as amended by the
Administration of Justice Committee)*

-B 56

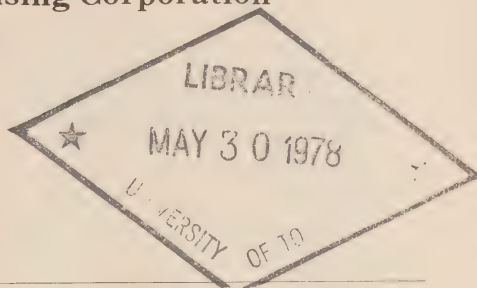
BILL 90

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**Government
Publications**

**An Act respecting
the Ontario Student Housing Corporation**



THE HON. C. BENNETT
Minister of Housing

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

Ontario Student Housing Corporation was constituted under Order in Council 3417/66, dated August 18th, 1966, for the purpose of developing and managing student housing projects in the Province of Ontario. The effect of the Bill is to dissolve the Corporation on June 30th, 1978 and to vest the rights and obligations of Ontario Student Housing Corporation in Ontario Housing Corporation.

BILL 90

1978

An Act respecting the Ontario Student Housing Corporation

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. On the 30th day of June, 1978, Ontario Student Housing Corporation, a corporation constituted under Order in Council No. 3417/66 dated August 18th, 1966 and made under subsection 2 of section 6 of *The Housing Development Act*, is dissolved and all its real and personal property of any kind whatsoever and all its rights and privileges, including all rights under any agreement entered into by Ontario Student Housing Corporation and all causes of action are, on that date vested in the Ontario Housing Corporation, and all obligations, liabilities and responsibilities of Ontario Student Housing Corporation become on that date obligations, liabilities and responsibilities of the Ontario Housing Corporation.

Ontario
Student
Housing
Corporation
dissolved
and its
property,
rights and
obligations
vested in
Ontario
Housing
Corporation
R.S.O. 1970,
c. 213

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is *The Ontario Student Housing Corporation Act, 1978*.

Short title

An Act respecting
the Ontario Student Housing
Corporation

1st Reading

May 18th, 1978

2nd Reading

3rd Reading

THE HON. C. BENNETT
Minister of Housing

(*Government Bill*)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting
the Ontario Student Housing Corporation**

LIBRARY
THE HON. C. BENNETT
Minister of Housing

1978
12/27/77
OF TORONTO

BILL 90

1978

An Act respecting the Ontario Student Housing Corporation

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. On the 30th day of June, 1978, Ontario Student Housing Corporation, a corporation constituted under Order in Council No. 3417/66 dated August 18th, 1966 and made under subsection 2 of section 6 of *The Housing Development Act*, is dissolved and all its real and personal property of any kind whatsoever and all its rights and privileges, including all rights under any agreement entered into by Ontario Student Housing Corporation and all causes of action are, on that date vested in the Ontario Housing Corporation, and all obligations, liabilities and responsibilities of Ontario Student Housing Corporation become on that date obligations, liabilities and responsibilities of the Ontario Housing Corporation.

Ontario Student Housing Corporation dissolved and its property, rights and obligations vested in Ontario Housing Corporation, R.S.O. 1970, c. 213

2. This Act comes into force on the day it receives Royal Assent.

Commencement

3. The short title of this Act is *The Ontario Student Housing Corporation Act, 1978*.

Short title

An Act respecting
the Ontario Student Housing
Corporation

1st Reading

May 18th, 1978

2nd Reading

May 30th, 1978

3rd Reading

May 30th, 1978

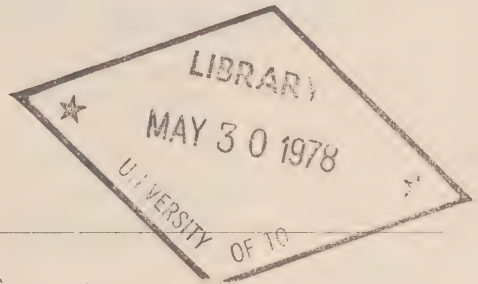
THE HON. C. BENNETT
Minister of Housing

78-44
B56
BILL 91

Government
Government Bill
Initiations

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Building Code Act, 1974



THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. The two words are being redefined. Presently the definitions read as follows:

(f) "*demolition*" means the doing of anything in the removal of a building or any part thereof;

.

(m) "*unsafe*", when used in respect of a building, means structurally inadequate or faulty for the purposes for which it is or is likely to be used or otherwise unsafe.

SECTION 2.—Subsection 1. The provision, as re-enacted, is reproduced below. The words underlined are additions to the provision as it presently reads:

(1) *No person shall construct or demolish or cause to be constructed or demolished a building in a municipality unless a permit therefor has been issued by the chief official.*

Subsection 2. Section 5 (2) of the Act empowers the Lieutenant Governor in Council to make regulations and municipalities to pass by-laws in respect of the matters set out in the clauses.

BILL 91

1978

An Act to amend The Building Code Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses *f* and *m* of section 1 of *The Building Code Act, 1974*, ^{s. 1 (*f, m*), re-enacted} being chapter 74, are repealed and the following substituted therefor:

(*f*) “demolition” means the doing of anything in the removal of a building or any material part thereof;

.

(*m*) “unsafe” when used in respect of a building means,

- (i) structurally inadequate or faulty for the purposes for which it is used, or
- (ii) in a condition that could be hazardous to persons in the normal use of the building.

- 2.—(1) Subsection 1 of section 5 of the said Act is repealed and ^{s. 5 (1), re-enacted} the following substituted therefor:

(1) No person shall construct or demolish or cause to be ^{Building permits} constructed or demolished a building in a municipality unless a permit has been issued therefor by the chief official.

- (2) Subsection 2 of the said section 5 is amended by adding ^{s. 5 (2), amended} thereto the following clause:

(*g*) requiring that a set of plans of buildings as constructed be filed with the chief official on completion of the construction of buildings of such class or classes as prescribed by the regulations.

s. 6 (1),
amended

- 3.**—(1) Subsection 1 of section 6 of the said Act is amended by striking out “or” at the end of clause *a* and by adding thereto the following clause:

1976. c. 52

- (*aa*) the applicant is a builder as defined in *The Ontario New Home Warranties Plan Act, 1976* and is not registered under that Act; or

.

s. 6 (3),
re-enacted

- (2) Subsection 3 of the said section 6 is repealed and the following substituted therefor:

Notice of
change

- (3) No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying the chief official and filing details of such change with him for the purpose of obtaining his authorization.

s. 6,
amended

- (3) The said section 6 is amended by adding thereto the following subsection:

No
construc-
tion
except in
accordance
with permit

- (5) No person shall construct or cause to be constructed a building in a municipality except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes thereto authorized by the chief official.

s. 7,
re-enacted

- 4.** Section 7 of the said Act is repealed and the following substituted therefor:

Conditions
for
occupation

7. Except as authorized by the regulations, no person shall occupy or use or permit to be occupied or used any building or part thereof newly erected or installed,

- (*a*) until notice of the date of completion of the building or part thereof is given to the chief official;

- (*b*) until,

- (i) an inspection is made pursuant to such notice,
or

- (ii) ten days have elapsed after the service of the notice or after the date of completion, whichever occurs last; and

- (*c*) until any order made by an inspector under section 8 is complied with.

SECTION 3.—Subsection 1. The provision has the effect of excluding a home builder as defined in *The Ontario New Home Warranties Plan Act, 1976* who is not registered under that Act from receiving a building permit.

Subsection 2. The Act presently provides for an applicant for a permit to notify the chief official of any change in the information in an application. The provision, as re-enacted, goes further and prohibits making a material change without notifying the chief official.

Subsection 3. The new section 6 (5) of the Act is complementary to the re-enacted section 6 (3) and prohibits construction except in accordance with a permit or any changes therefrom authorized by the chief official.

SECTION 4. Section 7 of the Act presently prohibits occupation of a new building until notice of completion is given and inspection is made (or the time allowed therefor has passed) and outstanding orders have been complied with.

The provision, as re-enacted, clarifies that no part of the new building may be occupied until the above procedure has been followed.

SECTION 5. The new provision authorizes an inspector to order that certain parts of a building not be covered until an inspection can be carried out.

SECTION 6. The provision presently permits the chief official to cause a building to be renovated, repaired or demolished where necessary for public safety.

The provision, as re-enacted, authorizes him to take other action in addition to or instead of the three courses set out. Such other action could involve the erection of barriers or the posting of signs.

SECTION 7. The provision is being re-enacted to clarify, by being more specific, the persons who may dispute the interpretation of an inspector or chief official.

5. The said Act is amended by adding thereto the following section: s. 8a,
enacted

8a.—(1) An inspector or chief official may issue an order prohibiting the covering or enclosing of any part of a building pending inspection and where such an order is issued, an inspection shall be made within a reasonable time after notice is given by the person to whom the order is issued that he is ready for the inspection. Order not
to cover

(2) Where a chief official has reason to believe that any part of a building has not been constructed in compliance with this Act and such part has been covered or enclosed, contrary to an order made by an inspector or chief official under subsection 1, he may order any person responsible for the construction to uncover the part at his own expense for the purpose of an inspection. Order to
uncover

(3) Subsections 4, 5 and 6 of section 8 apply to an order made under this section. Applica-
tion of
s. 8 (4-6)

(4) Section 16 does not apply to a notice mentioned in subsection 1. s. 16 does
not apply

6. Subsection 4 of section 9 of the said Act is repealed and the following substituted therefor: s. 9 (4),
re-enacted

(4) Where the chief official has made an order under subsection 2 and considers it necessary for the safety of the public, he may cause the building to be renovated, repaired or demolished for the purpose of removing the unsafe condition or take such other action as he considers necessary for the protection of the public and, where the building is in a municipality, the cost of the renovation, repair, demolition or other action may be added by the clerk to the collector's roll and collected in like manner as municipal taxes. Repairs
at expense
of owner

7. Subsection 1 of section 13 of the said Act is repealed and the following substituted therefor: s. 13 (1),
re-enacted

(1) Where there is a dispute between an applicant for or holder of a permit or a person to whom an order is given and the chief official or an inspector in respect of the interpretation of the technical requirements of the building code or the sufficiency of compliance with such technical requirements, any party to the dispute may apply to the Building Code Commission for a hearing and determination of the question. Hearings of
Commission

s. 18 (1),
amended

- 8.** Subsection 1 of section 18 of the said Act is amended by adding thereto the following clause:

(*ea*) prescribing classes of buildings for the purposes of clause *g* of subsection 2 of section 5.

s. 23 (1) (*c*),
re-enacted

- 9.**—(1) Clause *c* of subsection 1 of section 23 of the said Act is repealed and the following substituted therefor:

(*c*) contravenes any provision of this Act or the regulations or of any by-law passed under the authority of this Act,

.

s. 23,
amended

- (2) The said section 23 is amended by adding thereto the following subsections:

Limitation
period

(4) No proceeding under this section shall be commenced more than one year after the time when the subject-matter of the proceeding arose.

Fines
paid to
municipality

R.S.O. 1970,
cc. 6, 167

(5) Where a fine is imposed under this section, the proceeds of the fine shall be paid to the treasurer of the municipality within which the offence giving rise to the fine was committed, and section 4 of *The Administration of Justice Act* and section 4 of *The Fines and Forfeitures Act* do not apply in respect of any such fine.

Commence-
ment

- 10.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

- 11.** The short title of this Act is *The Building Code Amendment Act, 1978*.

SECTION 8. Section 18 (1) of the Act provides authority to the Lieutenant Governor in Council to make regulations. This addition is complementary to section 2 (2) of the Bill.

SECTION 9.—Subsection 1. Section 23 of the Act is the penalty section. The provision, as re-enacted, has the effect of making the section apply to contraventions of any municipal by-laws passed under the authority of this Act.

Subsection 2. The effect of the new provisions is:

1. To extend the time within which an action may be brought for contravention of the Act from six months to one year.
2. To allow a municipality to collect and retain fines for offences committed within the municipality's jurisdiction.

An Act to amend
The Building Code Act, 1974

1st Reading

May 18th, 1978

2nd Reading

3rd Reading

THE HON. I. GROSSMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

1242
B
-B 56

15
BILL 91

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Building Code Act, 1974

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



BILL 91

1978

An Act to amend The Building Code Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses *f* and *m* of section 1 of *The Building Code Act, 1974*, ^{s. 1 (*f, m*), re-enacted} being chapter 74, are repealed and the following substituted therefor:

(*f*) “demolition” means the doing of anything in the removal of a building or any material part thereof;

.

(*m*) “unsafe” when used in respect of a building means,

- (i) structurally inadequate or faulty for the purposes for which it is used, or
- (ii) in a condition that could be hazardous to persons in the normal use of the building.

- 2.—(1) Subsection 1 of section 5 of the said Act is repealed and ^{s. 5 (1), re-enacted} the following substituted therefor:

(1) No person shall construct or demolish or cause to be ^{Building permits} constructed or demolished a building in a municipality unless a permit has been issued therefor by the chief official.

- (2) Subsection 2 of the said section 5 is amended by adding ^{s. 5 (2), amended} thereto the following clause:

(*g*) requiring that a set of plans of buildings as constructed be filed with the chief official on completion of the construction of buildings of such class or classes as prescribed by the regulations.

s. 6 (1),
amended

- 3.**—(1) Subsection 1 of section 6 of the said Act is amended by striking out “or” at the end of clause *a* and by adding thereto the following clause:

1976, c. 52

(aa) the applicant is a builder as defined in *The Ontario New Home Warranties Plan Act, 1976* and is not registered under that Act; or

.

s. 6 (3),
re-enacted

- (2) Subsection 3 of the said section 6 is repealed and the following substituted therefor:

Notice of
change

(3) No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying the chief official and filing details of such change with him for the purpose of obtaining his authorization.

s. 6,
amended

- (3) The said section 6 is amended by adding thereto the following subsection:

No construction
except in
accordance
with permit

(5) No person shall construct or cause to be constructed a building in a municipality except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes thereto authorized by the chief official.

s. 7,
re-enacted

- 4.** Section 7 of the said Act is repealed and the following substituted therefor:

Conditions
for
occupation

7. Except as authorized by the regulations, no person shall occupy or use or permit to be occupied or used any building or part thereof newly erected or installed,

(a) until notice of the date of completion of the building or part thereof is given to the chief official;

(b) until,

(i) an inspection is made pursuant to such notice,
or

(ii) ten days have elapsed after the service of the notice or after the date of completion, whichever occurs last; and

(c) until any order made by an inspector under section 8 is complied with.

5. The said Act is amended by adding thereto the following s. 8a.
enacted
section:

8a.—(1) An inspector or chief official may issue an order Order not
to cover
prohibiting the covering or enclosing of any part of a building
pending inspection and where such an order is issued, an
inspection shall be made within a reasonable time after notice
is given by the person to whom the order is issued that he
is ready for the inspection.

(2) Where a chief official has reason to believe that any Order to
uncover
part of a building has not been constructed in compliance
with this Act and such part has been covered or enclosed,
contrary to an order made by an inspector or chief official
under subsection 1, he may order any person responsible
for the construction to uncover the part at his own expense
for the purpose of an inspection.

(3) Subsections 4, 5 and 6 of section 8 apply to an order Applica-
tion of
s. 8 (4-6)
made under this section.

(4) Section 16 does not apply to a notice mentioned in s. 16 does
not apply
subsection 1.

6. Subsection 4 of section 9 of the said Act is repealed and the s. 9 (4).
re-enacted
following substituted therefor:

(4) Where the chief official has made an order under Repairs
at expense
of owner
subsection 2 and considers it necessary for the safety of the
public, he may cause the building to be renovated, repaired
or demolished for the purpose of removing the unsafe
condition or take such other action as he considers necessary
for the protection of the public and, where the building is in a
municipality, the cost of the renovation, repair, demolition
or other action may be added by the clerk to the collector's
roll and collected in like manner as municipal taxes.

7. Subsection 1 of section 13 of the said Act is repealed and the s. 13 (1).
re-enacted
following substituted therefor:

(1) Where there is a dispute between an applicant for or Hearings of
Commission
holder of a permit or a person to whom an order is given and
the chief official or an inspector in respect of the interpre-
tation of the technical requirements of the building code
or the sufficiency of compliance with such technical require-
ments, any party to the dispute may apply to the Building
Code Commission for a hearing and determination of the
question.

s. 18 (1),
amended

8. Subsection 1 of section 18 of the said Act is amended by adding thereto the following clause:

(*ea*) prescribing classes of buildings for the purposes of clause *g* of subsection 2 of section 5.

s. 23 (1) (*c*),
re-enacted

9.—(1) Clause *c* of subsection 1 of section 23 of the said Act is repealed and the following substituted therefor:

(*c*) contravenes any provision of this Act or the regulations or of any by-law passed under the authority of this Act,

s. 23,
amended

(2) The said section 23 is amended by adding thereto the following subsections:

Limitation
period

(4) No proceeding under this section shall be commenced more than one year after the time when the subject-matter of the proceeding arose.

Fines
paid to
municipality

R.S.O. 1970,
cc. 6, 167

(5) Where a fine is imposed under this section, the proceeds of the fine shall be paid to the treasurer of the municipality within which the offence giving rise to the fine was committed, and section 4 of *The Administration of Justice Act* and section 4 of *The Fines and Forfeitures Act* do not apply in respect of any such fine.

Commence-
ment

10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

11. The short title of this Act is *The Building Code Amendment Act, 1978*.

An Act to amend
The Building Code Act, 1974

1st Reading

May 18th, 1978

2nd Reading

May 30th, 1978

3rd Reading

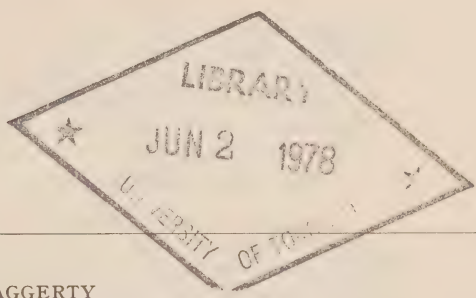
June 16th, 1978

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

4242
XB
1356

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act respecting
the Rights of Non-Unionized Workers



MR. HAGGERTY

EXPLANATORY NOTE

The purpose of the Bill is to provide a low cost mechanism whereby a non-unionized worker may obtain a review by the Ontario Labour Relations Board where the worker is discharged or otherwise disciplined for cause and the contract of employment is silent on matters of discipline. At the present time, a non-unionized worker who is dismissed or otherwise disciplined for cause may have no right of action against his employer notwithstanding the fact that the discipline is, having regard to all of the circumstances, unduly harsh.

The Bill provides a two stage process for reviewing complaints involving harsh discipline. Initially, a labour relations officer would be appointed to effect a settlement which would be reduced to writing and which would have to be complied with according to its terms. Then, if no settlement is reached, or where settlement is not likely, the Ontario Labour Relations Board would inquire into the matter. The Board, if satisfied that the complaint is justified, will have the power to make an order substituting such penalty as is just and reasonable in the circumstances.

BILL 92

1978

An Act respecting the Rights of Non-Unionized Workers

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Board" means the Ontario Labour Relations Board;
- (b) "complaint" means a complaint filed with the Board under subsection 1 of section 2.

2.—(1) Where an employee, who is not subject to a collective agreement under *The Labour Relations Act*, has been discharged or otherwise disciplined by his employer for cause and the contract of employment does not contain a specific penalty for the infraction for which the discharge or other discipline was imposed, where the employee is of the opinion that the penalty is unduly harsh, the employee may file a complaint with the Board.

Complaints
to O.L.R.B.
where
employee
discharged
or otherwise
disciplined
R.S.O. 1970.
c. 232

(2) Any regulations governing the practice and procedure of the Board apply, with necessary modifications, to a review under subsection 2 of section 3 and to a complaint.

Procedure

(3) The Board may authorize a labour relations officer to inquire into a complaint.

Inquiry
by labour
relations
officer

(4) The labour relations officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter.

Duties

(5) The labour relations officer shall report the results of his inquiry and endeavours to the Board.

Report

(6) Where a labour relations officer is unable to effect a settlement of the complaint or where the Board in its dis-

Remedy

cretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint and where the Board is satisfied that the discharge or other discipline imposed was unduly harsh, the Board may, by order, substitute such other penalty for the discharge or other discipline as to the Board seems just and reasonable in all the circumstances.

Idem

(7) Without limiting the generality of subsection 6,

- (a) where an employee has been discharged, the Board, in an order made under subsection 6, may order that the employee be reinstated in employment, with or without compensation or that the employee be compensated in lieu of reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer;
- (b) where an employee has been suspended, the Board, in an order made under subsection 6, may order that the employee be compensated for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer.

Effect of
settlement

3.—(1) Where a complaint has been settled whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the employer or his representative and the employee, the settlement is binding upon the employer and the employee and shall be complied with according to its terms.

Review of
settlement

(2) Where either the employer or the employee alleges that the other party has breached any term of a settlement referred to in subsection 1, the employer or the employee, as the case may be, may apply to the Board for a review of the matter and the Board, after an inquiry, may order that,

- (a) the employee or employer comply with the terms of the settlement; or
- (b) vary the terms of the settlement and order compliance with the terms of the settlement as varied.

Enforce-
ment of
orders

4. Where either the employer or the employee has failed to comply with any of the terms of an order made under subsection 6 of section 2 or subsection 2 of section 3 the

other party may, after the expiration of fourteen days from the date of the order or the date provided in the order for compliance, whichever is later, notify the Board in writing of such failure, and thereupon the Board shall file in the office of the Registrar of the Supreme Court a copy of the order, exclusive of the reasons therefor, if any, in the prescribed form, whereupon the order shall be entered in the same way as a judgment or order of that court and is enforceable as such.

5. The rights conferred by this Act are in addition to any other rights that an employee may have at law but, where a complaint is filed, any action brought by the employee in a court of law related to the discharge or discipline of the employee may be stayed pending the disposition of the matter by the Board. <sup>No
derogation
of rights</sup>

6. This Act comes into force on the day it receives Royal Assent. <sup>Commence-
ment</sup>

7. The short title of this Act is *The Non-Unionized Workers Protection Act, 1978*. ^{Short title}

An Act respecting the
Rights of Non-Unionized Workers

1st Reading

May 18th, 1978

2nd Reading

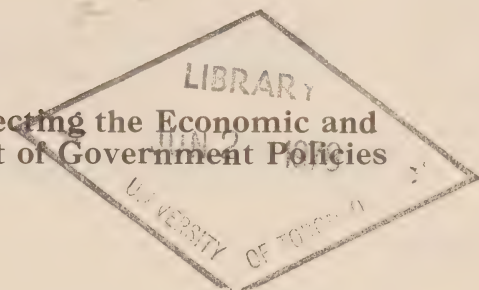
3rd Reading

MR. HAGGERTY

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting the Economic and
Fiscal Impact of Government Policies**



MR. PETERSON

EXPLANATORY NOTE

The purpose of the Bill is to require the preparation and disclosure of fiscal and economic studies for all legislative measures proposed by the Government.

BILL 93

1978

An Act respecting the Economic and Fiscal Impact of Government Policies

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Assembly" means the Legislative Assembly of Ontario;
- (b) "Government" means the Government of Ontario;
- (c) "Minister" means a Minister of the Crown in right of Ontario appointed by the Lieutenant Governor in Council;
- (d) "public money" has the same meaning as defined in *The Financial Administration Act*.

R.S.O. 1970,
c. 166

2. The Government shall cause to be prepared and shall approve a detailed fiscal and economic statement for every Government Bill or regulation prior to the time when the Bill is introduced into the Legislative Assembly or the regulation is filed with the Registrar of Regulations and the statement shall contain an assessment of the fiscal and economic impact of the policy embodied in the proposed statute or regulation and shall indicate whether, in the opinion of the Government, the policy will,

Fiscal and
economic
statement

- (a) duplicate the intent and function of existing programs and agencies;
- (b) increase prices for the consumer;
- (c) create the need for increased taxes;
- (d) result in a loss of jobs;

- (e) create jobs in the private sector;
- (f) create the necessity for an expanded civil service;
- (g) have a positive or negative effect on the attraction of investment capital;
- (h) reduce the incentive to work;
- (i) encourage or discourage the formation of new business.

Disclosure
of fiscal
and
economic
statement

3.—(1) Where a Bill, in respect of which a statement is prepared under section 2, is introduced in the Assembly, the Minister introducing the Bill shall lay before the Assembly a copy of the statement at the time the Bill is introduced.

Idem

(2) Where a regulation, in respect of which a statement is prepared under section 2, is filed with the Registrar of Regulations, the Government shall lay before the Assembly a copy of the statement and, if the Assembly is not in session, the statement shall be laid before the Assembly at the commencement of the next ensuing session.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is *The Economic Impact Disclosure Act, 1978*.

An Act respecting the Economic
and Fiscal Impact of Government
Policies

1st Reading

May 23rd, 1978

2nd Reading

3rd Reading

MR. PETERSON

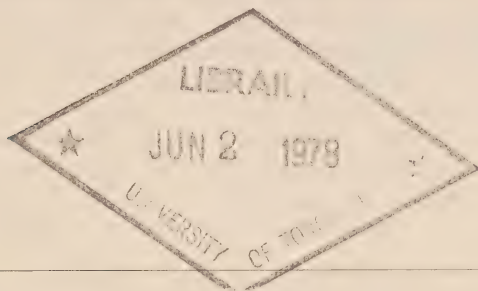
(Private Member's Bill)

BILL 94

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Ontario Water Resources Act**



MR. GERMA

EXPLANATORY NOTE

The purpose of the Bill is to prohibit mining activity in bodies of water that serve or are likely to serve as sources of community drinking water. The Bill provides for the issuance of permits to authorize mining activity that is in the public interest. Mining activity undertaken without the authority of a licence is constituted as an offence.

BILL 94

1978

An Act to amend The Ontario Water Resources Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Ontario Water Resources Act*, being chapter 332 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 1, section 70, 1973, chapter 90, section 1, 1974, chapter 19, section 1 and 1975, chapter 71, section 1, is further amended by relettering clause *qa*, as enacted by the Statutes of Ontario, 1974, chapter 19, section 1, as clause *qb* and by adding thereto the following clause: s. 1,
amended

(*qa*) “source of community drinking water” means any body of water that is used or is likely to be used at some future date as a public source of drinking water by any municipality or community in Ontario.

2. The said Act is amended by adding thereto the following section: s. 39a,
enacted

39a.—(1) The Ministry shall prepare and publish in *The Ontario Gazette* a list of the names of all sources of community drinking water in Ontario. List of
sources of
community
drinking
water

(2) No person shall prospect, mine or stake out any mining claim in the bed of any body of water listed as a source of community drinking water in *The Ontario Gazette* without a permit issued by a Director. Mining of
bed of listed
water sources
prohibited

(3) A Director, where he considers it advisable and in the public interest, may issue a permit referred to in subsection 2, and the Director may, in his discretion, refuse to issue or cancel a permit, may impose such terms and conditions in issuing a permit as he considers proper and may alter the terms and conditions of a permit after it is issued. Permit

(4) Every person who knowingly contravenes subsection 2 or any of the terms and conditions of a permit issued by a Offence

Director is guilty of an offence and on summary conviction is liable to a fine of not more than \$200 for every day the contravention continues.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is *The Ontario Water Resources Amendment Act, 1978*.

An Act to amend
The Ontario Water Resources Act

1st Reading

May 23rd, 1978

2nd Reading

3rd Reading

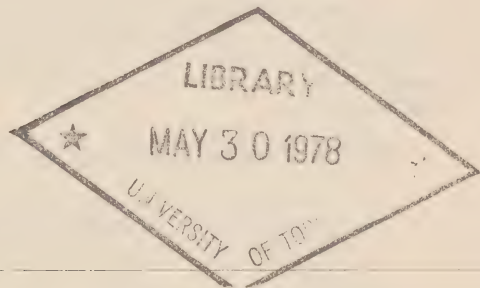
MR. GERMA

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide
Probation Services to Young Offenders**

**Government
Publications**



THE HON. KEITH C. NORTON
Minister of Community and Social Services

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill is made necessary due to the repeal of *The Probation Act*, being chapter 364 of the Revised Statutes of Ontario, 1970, by *The Ministry of Correctional Services Act, 1978*. Since children's probation services have been provided under the authority of *The Probation Act* a new legislative basis is required.

The principal changes contained in the Bill include the following:

1. The Ministry of Community and Social Services is made responsible for the provision of children's probation services to conform with the policy transferring children's services to the Ministry. (s. 1)
2. The Minister may designate persons who are not employees of the Ministry to be probation officers. (s. 2 (2))
3. The duties under this Bill of a probation officer to a court are limited to court directions set forth in a probation order. Where a probation officer feels that he or she cannot comply with a probation order, a remedy is provided to enable the probation officer to obtain a variation of the direction. (s. 5)
4. The Bill clarifies that a probation officer may be assigned duties by the Minister.

BILL 95

1978

An Act to provide Probation Services to Young Offenders

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "court" means a provincial court (family division) or the Unified Family Court;
- (b) "Minister" means the Minister of Community and Social Services;
- (c) "Ministry" means the Ministry of Community and Social Services;
- (d) "probationer" means a person who is bound by a probation order made under the *Juvenile Delinquents Act* (Canada). R.S.C. 1970,
c. J-3

2.—(1) Such probation officers as are considered necessary for the purposes of this Act may be appointed under *The Public Service Act*. Probation
officers
appointed
R.S.O. 1970,
c. 386

(2) The Minister may designate any person, other than a person who is appointed a probation officer under subsection 1, as a probation officer for the purpose of this Act. Probation
officers
designated

(3) Every probation officer appointed under subsection 1 or designated under subsection 2 is a probation officer in and for the Province of Ontario. Juris-
diction

3. The Minister may enter into written agreements with any person upon such terms and conditions as may be agreed to respecting the provision of probation services. Agreements

4. It is a function of a probation officer to assist a probationer in relation to the court process by explaining Functions
of
probation
officer

in language suitable to his or her age and level of understanding the proceedings and decisions affecting the probationer and, in general, to provide guidance and advice to a probationer and his or her family for the purpose of helping the probationer adjust to and benefit from participation in community life.

Duties of
probation
officer

5.—(1) It is the duty of a probation officer,

- (a) to procure and report to a court such information pertaining to a person found to have been delinquent as the court may require for the purpose of making a disposition of the case;
- (b) to make recommendations in the report referred to in clause *a* as to the disposition of the case upon being requested by the court;
- (c) to comply with any direction made to the probation officer by a court in a probation order.

Variation
of
direction

(2) Where a probation officer is of the opinion that compliance with a direction issued by a court is impracticable or impossible, the probation officer may apply to the court for a variation of its direction, and, the court, upon consideration of the reasons for the application, may vary its direction to the probation officer as it considers appropriate in the circumstances.

Duties
assigned by
Minister

6. In addition to the duties of a probation officer referred to in section 5, a probation officer shall perform such other duties as are assigned to him by the Minister.

Regulations

7. The Lieutenant Governor in Council may make regulations,

- (a) respecting the qualifications, duties and powers of probation officers;
- (b) prescribing the reports and returns to be made by probation officers.

Commence-
ment

8. This Act comes into force on the 1st day of July, 1978.

Short title

9. The short title of this Act is *The Children's Probation Act, 1978*.

An Act to provide
Probation Services to Young Offenders

1st Reading

May 25th, 1978

2nd Reading

3rd Reading

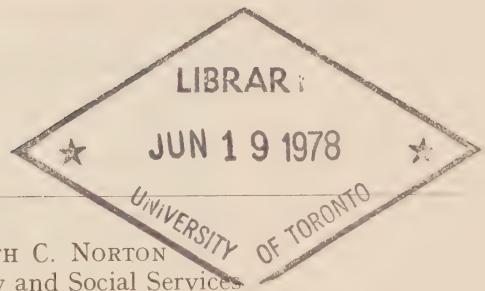
THE HON. KEITH C. NORTON
Minister of Community and
Social Services

(Government Bill)

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2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide
Probation Services to Young Offenders**



THE HON. KEITH C. NORTON
Minister of Community and Social Services

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

The Bill is made necessary due to the repeal of *The Probation Act*, being chapter 364 of the Revised Statutes of Ontario, 1970, by *The Ministry of Correctional Services Act, 1978*. Since children's probation services have been provided under the authority of *The Probation Act* a new legislative basis is required.

The principal changes contained in the Bill include the following:

1. The Ministry of Community and Social Services is made responsible for the provision of children's probation services to conform with the policy transferring children's services to the Ministry. (s. 1)
2. The Minister may designate persons who are not employees of the Ministry to be probation officers. (s. 2 (2))
3. The duties under this Bill of a probation officer to a court are limited to court directions set forth in a probation order. Where a probation officer feels that he or she cannot comply with a probation order, a remedy is provided to enable the probation officer to obtain a variation of the direction. (s. 5)
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BILL 95

1978

An Act to provide Probation Services to Young Offenders

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- (c) "Ministry" means the Ministry of Community and Social Services;
- (d) "probationer" means a person who is bound by a probation order made under the *Juvenile Delinquents Act* (Canada).

R.S.C. 1970,
c. J-3

2.—(1) Such probation officers as are considered necessary for the purposes of this Act may be appointed under *The Public Service Act*.

Probation
officers
appointed
R.S.O. 1970,
c. 386

(2) The Minister may designate any person, other than a person who is appointed a probation officer under subsection 1, as a probation officer for the purpose of this Act but every such designated probation officer shall exercise the powers and perform the duties assigned to the probation officer under the supervision and direction of a probation officer appointed under subsection 1.

Probation
officers
designated

(3) Every probation officer appointed under subsection 1 or designated under subsection 2 is a probation officer in and for the Province of Ontario.

Juris-
diction

3. The Minister may enter into written agreements with any person upon such terms and conditions as may be agreed to respecting the provision of probation services.

Agreements

Functions
of
probation
officer

4. It is a function of a probation officer to assist a probationer in relation to the court process by explaining in language suitable to his or her age and level of understanding the proceedings and decisions affecting the probationer and, in general, to provide guidance and advice to a probationer and his or her family for the purpose of helping the probationer adjust to and benefit from participation in community life.

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- (a) to procure and report to a court such information pertaining to a person found to have been delinquent as the court may require for the purpose of making a disposition of the case;
- (b) to make recommendations in the report referred to in clause *a* as to the disposition of the case upon being requested by the court;
- (c) to comply with any direction made to the probation officer by a court in a probation order.

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(2) Where a probation officer is of the opinion that compliance with a direction issued by a court is impracticable or impossible, the probation officer may apply to the court for a variation of its direction, and, the court, upon consideration of the reasons for the application, may vary its direction to the probation officer as it considers appropriate in the circumstances.

Duties
assigned by
Minister

6. In addition to the duties of a probation officer referred to in section 5, a probation officer shall perform such other duties as are assigned to him by the Minister.

Regulations

7. The Lieutenant Governor in Council may make regulations,

- (a) respecting the qualifications, duties and powers of probation officers;
- (b) prescribing the reports and returns to be made by probation officers.

Commence-
ment

8. This Act comes into force on the 1st day of July, 1978.

Short title

9. The short title of this Act is *The Children's Probation Act, 1978*.

An Act to provide
Probation Services to Young Offenders

1st Reading

May 25th, 1978

2nd Reading

May 30th, 1978

3rd Reading

THE HON. KEITH C. NORTON
Minister of Community and
Social Services

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 95

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide
Probation Services to Young Offenders**

THE HON. KEITH C. NORTON
Minister of Community and Social Services



BILL 95

1978

An Act to provide Probation Services to Young Offenders

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "court" means a provincial court (family division) or the Unified Family Court;
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- (c) "Ministry" means the Ministry of Community and Social Services;
- (d) "probationer" means a person who is bound by a probation order made under the *Juvenile Delinquents Act* (Canada).

R.S.C. 1970,
c. J-3

2.—(1) Such probation officers as are considered necessary for the purposes of this Act may be appointed under *The Public Service Act*.

Probation
officers
appointed
R.S.O. 1970,
c. 386

(2) The Minister may designate any person, other than a person who is appointed a probation officer under subsection 1, as a probation officer for the purpose of this Act but every such designated probation officer shall exercise the powers and perform the duties assigned to the probation officer under the supervision and direction of a probation officer appointed under subsection 1.

Probation
officers
designated

(3) Every probation officer appointed under subsection 1 or designated under subsection 2 is a probation officer in and for the Province of Ontario.

Juris-
diction

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of
probation
officer

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Duties of
probation
officer

5.—(1) It is the duty of a probation officer,

- (a) to procure and report to a court such information pertaining to a person found to have been delinquent as the court may require for the purpose of making a disposition of the case;
- (b) to make recommendations in the report referred to in clause *a* as to the disposition of the case upon being requested by the court;
- (c) to comply with any direction made to the probation officer by a court in a probation order.

Variation
of
direction

(2) Where a probation officer is of the opinion that compliance with a direction issued by a court is impracticable or impossible, the probation officer may apply to the court for a variation of its direction, and, the court, upon consideration of the reasons for the application, may vary its direction to the probation officer as it considers appropriate in the circumstances.

Duties
assigned by
Minister

6. In addition to the duties of a probation officer referred to in section 5, a probation officer shall perform such other duties as are assigned to him by the Minister.

Regulations

7. The Lieutenant Governor in Council may make regulations,

- (a) respecting the qualifications, duties and powers of probation officers;
- (b) prescribing the reports and returns to be made by probation officers.

Commence-
ment

8. This Act comes into force on the 1st day of July, 1978.

Short title

9. The short title of this Act is *The Children's Probation Act, 1978*.

An Act to provide
Probation Services to Young Offenders

1st Reading

May 25th, 1978

2nd Reading

May 30th, 1978

3rd Reading

June 19th, 1978

THE HON. KEITH C. NORTON
Minister of Community and
Social Services

36 BILL 96

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Liquor Licence Act, 1975**

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO



BILL 96

1978

An Act to amend The Liquor Licence Act, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 40 of *The Liquor Licence Act, 1975*, being chapter 40, ^{s. 40, amended} is amended by adding thereto the following clauses:

(da) providing for the reclassification of premises by the Board;

.

(fa) regulating the conduct of agents and representatives registered under section 39;

.

(x) prohibiting or regulating and controlling the possession of liquor in provincial parks.

2. Section 45 of the said Act is repealed and the following substituted therefor: ^{s. 45, re-enacted}

45.—(1) No person shall knowingly sell or supply liquor to a person under the age of nineteen years. ^{Prohibition re sale of liquor}

(2) No person shall sell or supply liquor to a person who ^{Idem} is apparently under the age of nineteen years, and, in any prosecution for a contravention of this subsection, the justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of nineteen years.

(3) No person under the age of nineteen years shall have, consume, attempt to purchase, purchase or otherwise obtain liquor. ^{Prohibition re purchase of liquor}

Where
subs. 3 does
not apply

(4) Subsection 3 does not operate to prohibit a person of the age of eighteen years being in possession of liquor during the course of his employment on premises in which the sale of liquor is authorized.

Prohibition
re entering
premises

(5) No person under the age of nineteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the regulations.

Exception
to subs. 5

(6) Subsection 5 does not apply to a person of the age of eighteen years employed on premises in which the sale of liquor is authorized while he is on such premises during the course of his employment.

Application
of section

(7) This section does not apply to the supplying of liquor to a person under the age of nineteen years by the parent or guardian of such person in a residence as defined in section 46 or to the consumption of liquor therein by such person.

Card as
proof of
age

(8) A person who sells or supplies liquor to another person shall be deemed not to be in contravention of subsection 1 or 2 if, before he sells or supplies the liquor, a card in the form prescribed by the regulations is produced to him by the person to whom he sells or supplies the liquor, which purports to be issued by the Board to the person producing it and if there is no apparent inconsistency on the face of the card or between the card and the person producing it.

Where
deemed to
be over 19
years

(9) For the purposes of this section, every person who attains the age of eighteen years on or before the 31st day of December, 1978 shall be deemed to be over the age of nineteen years.

s. 46.
amended

3.—(1) Section 46 of the said Act is amended by adding thereto the following subsection:

Unlawful
possession

(2a) No person shall have liquor in any place other than a premises in respect of which a licence or permit is issued or a residence except where the liquor is in a closed container and the container is not displayed to public view.

s. 46 (4).
re-enacted

(2) Subsection 4 of the said section 46 is repealed and the following substituted therefor:

Arrest
without
warrant

(4) A police officer may arrest without warrant any person whom he finds contravening subsection 3 where, in the opinion of the police officer, to do so is necessary for the safety of the person or is necessary to protect another person from injury.

4. The said Act is amended by adding thereto the following section: s. 46a. enacted

46a.—(1) The council of a municipality, including a metropolitan or regional municipality, may by by-law designate stadia, arenas and other recreational areas within the municipality owned or controlled by the municipality as places where possession of liquor is prohibited. By-law designating public place

(2) A designation under subsection 1 does not operate to prevent the Board from issuing any licence or permit under this Act. Non-application of subs. 1

(3) No person shall have liquor in a place designated under subsection 1. Unlawful possession

(4) Subsection 3 does not apply to a person in possession of liquor under the authority of a licence or permit or in possession of liquor purchased on premises in respect of which a licence or permit is issued. Exception to subs. 3

5. Section 47 of the said Act is amended by adding thereto the following subsections: s. 47. amended

- (3) The holder of a licence or his employee may, Right to refuse entry
- (a) request a person to leave; or
- (b) forbid a person to enter the licensed premises,

where he has reason to believe that the presence of that person on the premises is undesirable.

- (4) No person shall, Not to remain after request to leave
- (a) remain on licensed premises after he is requested to leave by the holder of the licence or his employee; or
- (b) re-enter the licensed premises on the same day he was requested to leave.

6. Subsection 1 of section 52 of the said Act is repealed and the following substituted therefor: s. 52 (1). re-enacted

(1) Any person who is over the age of nineteen years and not an interdicted person may apply to the Board for a card indicating that such person has attained the age of nineteen years. Card indicating age

Idem	(1a) Any person who is over the age of eighteen years on the 1st day of January, 1979 and not an interdicted person may apply to the Board for a card indicating that such person has attained the age of eighteen years on or before the 31st day of December, 1978.
s. 55 (1), amended	7. —(1) Subsection 1 of section 55 of the said Act is amended by striking out “\$2,000” in the thirteenth line and inserting in lieu thereof “\$10,000”.
s. 55, amended	(2) The said section 55 is amended by adding thereto the following subsections:
Additional penalty	(1a) In addition to any other penalty or action under this Act, the licence of every person who contravenes subsection 2 of section 45 shall be suspended for a period of not less than seven days.
Minimum fine	(1b) Where a person who is the holder of a licence contravenes subsection 2 of section 45, the fine imposed under subsection 1 shall be not less than \$500.
Idem	(1c) Where a person who is not the holder of a licence contravenes subsection 2 of section 45, the fine imposed under subsection 1 shall be not less than \$100.
s. 56 (1), re-enacted	8. Subsection 1 of section 56 of the said Act is repealed and the following substituted therefor:
Seizure of liquor	(1) Where liquor is found by a police officer under circumstances where the liquor constitutes evidence necessary to prove a contravention of this Act, or where an offence is committed under this Act and a police officer, on reasonable and probable grounds, in view of the offence committed and the presence of liquor, believes that a further offence is likely to be committed, the police officer may seize and take away the liquor and packages in which it is kept.
s. 59 (c), re-enacted	9. Clause <i>c</i> of section 59 of the said Act is repealed and the following substituted therefor:
R.S.C. 1970, c. F-27	(c) subject to section 49, of a medicine registered under the <i>Food and Drugs Act</i> (Canada); or
Commence- ment	10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
Short title	11. The short title of this Act is <i>The Liquor Licence Amendment Act, 1978</i> .

An Act to amend
The Liquor Licence Act, 1975

1st Reading

May 25th, 1978

2nd Reading

June 12th, 1978

3rd Reading

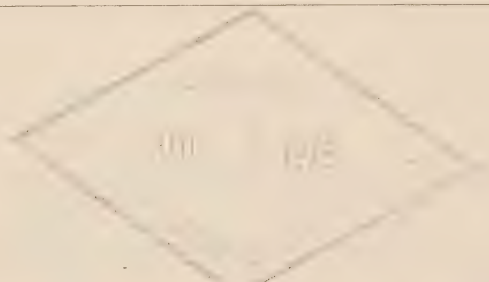
June 19th, 1978

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Liquor Licence Act, 1975**

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. Section 40 of the Act provides that the Lieutenant Governor in Council may make regulations in respect of the matters set out in the clauses following.

SECTION 2. All the prohibitions that applied in respect of selling and serving liquor to or of consumption of liquor by minors have been extended to those under nineteen. Also, the prohibition in respect of being on premises where liquor is served has been extended to all under nineteen.

The prohibitions have not been extended to apply to any person who reaches eighteen by the 31st day of December, 1978.

Further, a person who is eighteen may possess liquor if it is during the course of his employment and may be on premises where liquor is sold during the course of his employment.

BILL 96

1978

**An Act to amend
The Liquor Licence Act, 1975**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 40 of *The Liquor Licence Act, 1975*, being chapter 40, ^{s. 40, amended} is amended by adding thereto the following clauses:

(da) providing for the reclassification of premises by the Board;

.

(fa) regulating the conduct of agents and representatives registered under section 39;

.

(x) prohibiting or regulating and controlling the possession of liquor in provincial parks.

2. Section 45 of the said Act is repealed and the following sub-^{s. 45, re-enacted}stituted therefor:

45.—(1) No person shall knowingly sell or supply liquor to a person under the age of nineteen years. ^{Prohibition re sale of liquor}

(2) No person shall sell or supply liquor to a person who ^{Idem} is apparently under the age of nineteen years, and, in any prosecution for a contravention of this subsection, the justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of nineteen years.

(3) No person under the age of nineteen years shall have, consume, attempt to purchase, purchase or otherwise obtain liquor. ^{Prohibition re purchase of liquor}

Where
subs. 3 does
not apply

(4) Subsection 3 does not operate to prohibit a person of the age of eighteen years being in possession of liquor during the course of his employment on premises in which the sale of liquor is authorized.

Prohibition
re entering
premises

(5) No person under the age of nineteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the regulations.

Exception
to subs. 5

(6) Subsection 5 does not apply to a person of the age of eighteen years employed on premises in which the sale of liquor is authorized while he is on such premises during the course of his employment.

Application
of section

(7) This section does not apply to the supplying of liquor to a person under the age of nineteen years by the parent or guardian of such person in a residence as defined in section 46 or to the consumption of liquor therein by such person.

Card as
proof of
age

(8) A person who sells or supplies liquor to another person shall be deemed not to be in contravention of subsection 1 or 2 if, before he sells or supplies the liquor, a card in the form prescribed by the regulations is produced to him by the person to whom he sells or supplies the liquor, which purports to be issued by the Board to the person producing it and if there is no apparent inconsistency on the face of the card or between the card and the person producing it.

Where
deemed to
be over 19
years

(9) For the purposes of this section, every person who attains the age of eighteen years on or before the 31st day of December, 1978 shall be deemed to be over the age of nineteen years.

s. 46,
amended

3.—(1) Section 46 of the said Act is amended by adding thereto the following subsection:

Unlawful
possession

(2a) No person shall have liquor in any place other than a premises in respect of which a licence or permit is issued or a residence except where the liquor is in a closed container and the container is not displayed to public view.

s. 46 (4),
re-enacted

(2) Subsection 4 of the said section 46 is repealed and the following substituted therefor:

Arrest
without
warrant

(4) A police officer may arrest without warrant any person whom he finds contravening subsection 3 where, in the opinion of the police officer, to do so is necessary for the safety of the person or is necessary to protect another person from injury.

SECTION 3.—Subsection 1. The new provision prohibits the possession of liquor except at a residence or licensed premises unless the liquor is in a closed container and not subject to public view.

Subsection 2. Section 46 (4) of the Act is recast to permit a police officer to arrest an intoxicated person where it is necessary for that person's safety.

SECTION 4. The new section of the Act being added provides for the designation of specified places as places where liquor may not be carried. The designation would be by by-law of a municipal council.

SECTION 5. The new provisions clarify that a licence holder may refuse entry to licensed premises or may request a person on the premises to leave.

SECTION 6. This is complementary to section 2 of the Bill.

4. The said Act is amended by adding thereto the following section: s. 46a.
enacted

46a.—(1) The council of a municipality, including a metropolitan or regional municipality, may by by-law designate stadia, arenas and other recreational areas within the municipality owned or controlled by the municipality as places where possession of liquor is prohibited. By-law
designating
public place

(2) A designation under subsection 1 does not operate to prevent the Board from issuing any licence or permit under this Act. Non-applica-
tion of
subs. 1

(3) No person shall have liquor in a place designated under subsection 1. Unlawful
possession

(4) Subsection 3 does not apply to a person in possession of liquor under the authority of a licence or permit or in possession of liquor purchased on premises in respect of which a licence or permit is issued. Exception
to subs. 3

5. Section 47 of the said Act is amended by adding thereto the following subsections: s. 47.
amended

- (3) The holder of a licence or his employee may, Right to
refuse
entry
- (a) request a person to leave; or
- (b) forbid a person to enter the licensed premises,

where he has reason to believe that the presence of that person on the premises is undesirable.

- (4) No person shall, Not to
remain after
request to
leave
- (a) remain on licensed premises after he is requested to leave by the holder of the licence or his employee; or
- (b) re-enter the licensed premises on the same day he was requested to leave.

6. Subsection 1 of section 52 of the said Act is repealed and the following substituted therefor: s. 52 (1).
re-enacted

(1) Any person who is over the age of nineteen years and not an interdicted person may apply to the Board for a card indicating that such person has attained the age of nineteen years. Card
indicating
age

Idem

(1a) Any person who is over the age of eighteen years on the 1st day of January, 1979 and not an interdicted person may apply to the Board for a card indicating that such person has attained the age of eighteen years on or before the 31st day of December, 1978.

s. 55 (1),
amended

7.—(1) Subsection 1 of section 55 of the said Act is amended by striking out “\$2,000” in the thirteenth line and inserting in lieu thereof “\$10,000”.

s. 55,
amended

(2) The said section 55 is amended by adding thereto the following subsections:

Additional
penalty

(1a) In addition to any other penalty or action under this Act, the licence of every person who contravenes subsection 2 of section 45 shall be suspended for a period of not less than seven days.

Minimum
fine

(1b) Where a person who is the holder of a licence contravenes subsection 2 of section 45, the fine imposed under subsection 1 shall be not less than \$500.

Idem

(1c) Where a person who is not the holder of a licence contravenes subsection 2 of section 45, the fine imposed under subsection 1 shall be not less than \$100.

s. 56 (1),
re-enacted

8. Subsection 1 of section 56 of the said Act is repealed and the following substituted therefor:

Seizure of
liquor

(1) Where liquor is found by a police officer under circumstances where the liquor constitutes evidence necessary to prove a contravention of this Act, or where an offence is committed under this Act and a police officer, on reasonable and probable grounds, in view of the offence committed and the presence of liquor, believes that a further offence is likely to be committed, the police officer may seize and take away the liquor and packages in which it is kept.

s. 59 (c),
re-enacted

9. Clause c of section 59 of the said Act is repealed and the following substituted therefor:

R.S.C. 1970,
c. F-27

(c) subject to section 49, of a medicine registered under the *Food and Drugs Act* (Canada); or

Commence-
ment

10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

11. The short title of this Act is *The Liquor Licence Amendment Act, 1978*.

SECTION 7. The additional penalty of licence suspension is provided in respect of any licence holder who serves or sells liquor to a person under nineteen.

Minimum fines are set out for the contravention of section 45 (2) of the Act (selling or serving liquor to a person under nineteen).

SECTION 8. The authority of a police officer to seize liquor is extended to circumstances where an offence is committed and where in view of the offence and the presence of liquor it is likely that another offence will be committed.

SECTION 9. The amendment is of a housekeeping nature to reflect a change in a reference to Federal legislation.

Where
subs. 3 does
not apply

(4) Subsection 3 does not operate to prohibit a person of the age of eighteen years being in possession of liquor during the course of his employment on premises in which the sale of liquor is authorized.

Prohibition
re entering
premises

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of section

(7) This section does not apply to the supplying of liquor to a person under the age of nineteen years by the parent or guardian of such person in a residence as defined in section 46 or to the consumption of liquor therein by such person.

Card as
proof of
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(8) A person who sells or supplies liquor to another person shall be deemed not to be in contravention of subsection 1 or 2 if, before he sells or supplies the liquor, a card in the form prescribed by the regulations is produced to him by the person to whom he sells or supplies the liquor, which purports to be issued by the Board to the person producing it and if there is no apparent inconsistency on the face of the card or between the card and the person producing it.

Where
deemed to
be over 19
years

(9) For the purposes of this section, every person who attains the age of eighteen years on or before the 31st day of August, 1978 shall be deemed to be over the age of nineteen years.

s. 46.
amended

3.—(1) Section 46 of the said Act is amended by adding thereto the following subsection:

Unlawful
possession

(2a) No person shall have liquor in any place other than a premises in respect of which a licence or permit is issued or a residence except where the liquor is in a closed container and the container is not displayed to public view.

s. 46 (4),
re-enacted

(2) Subsection 4 of the said section 46 is repealed and the following substituted therefor:

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without
warrant

(4) A police officer may arrest without warrant any person whom he finds contravening subsection 3 where, in the opinion of the police officer, to do so is necessary for the safety of the person or is necessary to protect another person from injury.

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Subsection 2. Section 46 (4) of the Act is recast to permit a police officer to arrest an intoxicated person where it is necessary for that person's safety.

SECTION 4. The new section of the Act being added provides for the designation of specified places as places where liquor may not be carried. The designation would be by by-law of a municipal council.

SECTION 5. The new provisions clarify that a licence holder may refuse entry to licensed premises or may request a person on the premises to leave.

SECTION 6. This is complementary to section 2 of the Bill.

4. The said Act is amended by adding thereto the following section: s. 46a,
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46a.—(1) The council of a municipality may by by-law designate stadia, arenas and other recreational areas within the municipality owned or controlled by the municipality as places where possession of liquor is prohibited. By-law
designating
public place

(2) A designation under subsection 1 does not operate to prevent the Board from issuing any licence or permit under this Act. Non-applica-
tion of
subs. 1

(3) No person shall have liquor in a place designated under subsection 1. Unlawful
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(a) request a person to leave; or

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where he has reason to believe that the presence of that person on the premises is undesirable.

(4) No person shall,

Not to
remain after
request to
leave

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(b) re-enter the licensed premises on the same day he was requested to leave.

6. Subsection 1 of section 52 of the said Act is repealed and the following substituted therefor: s. 52 (1),
re-enacted

(1) Any person who is over the age of nineteen years and not an interdicted person may apply to the Board for a card indicating that such person has attained the age of nineteen years. Card
indicating
age

(1a) Any person who is over the age of eighteen years on the 1st day of September, 1978 and not an interdicted Idem

person may apply to the Board for a card indicating that such person has attained the age of eighteen on or before the 31st day of August, 1978.

s. 55 (1),
amended

- 7.—(1) Subsection 1 of section 55 of the said Act is amended by striking out “\$2,000” in the thirteenth line and inserting in lieu thereof “\$10,000”.

s. 55,
amended

- (2) The said section 55 is amended by adding thereto the following subsections:

Additional
penalty

(1a) In addition to any other penalty or action under this Act, the licence of every person who contravenes subsection 2 of section 45 shall be suspended for a period of not less than seven days.

Minimum
fine

(1b) Where a person who is the holder of a licence contravenes subsection 2 of section 45, the fine imposed under subsection 1 shall be not less than \$500.

Idem

(1c) Where a person who is not the holder of a licence contravenes subsection 2 of section 45, the fine imposed under subsection 1 shall be not less than \$100.

s. 56 (1),
re-enacted

8. Subsection 1 of section 56 of the said Act is repealed and the following substituted therefor:

Seizure of
liquor

(1) Where liquor is found by a police officer under circumstances where the liquor constitutes evidence necessary to prove a contravention of this Act, or where an offence is committed under this Act and a police officer, on reasonable and probable grounds, in view of the offence committed and the presence of liquor, believes that a further offence is likely to be committed, the police officer may seize and take away the liquor and packages in which it is kept.

s. 59 (c),
re-enacted

9. Clause c of section 59 of the said Act is repealed and the following substituted therefor:

(c) subject to section 49, of a medicine registered under the *Food and Drugs Act* (Canada); or

R.S.C. 1970,
c. F-27

Commence-
ment

10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

11. The short title of this Act is *The Liquor Licence Amendment Act, 1978*.

SECTION 7. The additional penalty of licence suspension is provided in respect of any licence holder who serves or sells liquor to a person under nineteen.

Minimum fines are set out for the contravention of section 45 (2) of the Act (selling or serving liquor to a person under nineteen).

SECTION 8. The authority of a police officer to seize liquor is extended to circumstances where an offence is committed and where in view of the offence and the presence of liquor it is likely that another offence will be committed.

SECTION 9. The amendment is of a housekeeping nature to reflect a change in a reference to Federal legislation.

An Act to amend
The Liquor Licence Act, 1975

1st Reading

May 25th, 1978

2nd Reading

3rd Reading

THE HON. I. GROSSMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

BILL 97

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Employment Standards Act, 1974**

MR. MACKENZIE

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of the Bill is to require an employer to provide a leave of absence to any employee who has been elected to provincial or municipal office so that the employee may be able to carry out the duties of an elected official.

BILL 97

1978

An Act to amend The Employment Standards Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Employment Standards Act, 1974*, being chapter 112, is amended by adding thereto the following Part: Part XI-A
(ss. 39a-39d),
enacted

PART XI-A

ELECTED OFFICIAL LEAVE

39a. No employer shall terminate the employment of or lay-off an employee who is entitled to a leave of absence under this Part by reason of that employee being an elected official. Elected
official
leave

39b.—(1) An employee who has been elected to the Legislative Assembly or to a municipal public office and who has been employed by the employer for a period of three months preceding the date of the election shall be entitled upon application therefor to a leave of absence for the purpose of carrying out his duties as an elected official. When leave
to be taken

(2) A leave of absence under this Part may be for a continuous period consisting of the whole or a part of the term of office to which the person was elected or for such intermittent periods of time during the day or week as the employee may feel is necessary to fulfil his duties as an elected official. Duration
of leave

(3) Where a leave of absence is for a continuous period, the employee shall give the employer two weeks notice in writing of the day upon which the employee intends to commence the leave and shall set out in this notice the estimated duration of the leave. Notice

Idem

(4) Where a leave of absence is for intermittent periods, the employee shall give to the employer notice in writing prior to commencing the leave of regular periods of time during the day or week that the employee intends to be on leave, but the employee is entitled to a leave of absence at other times where such leave is necessary for the employee to fulfil his duties as an elected official.

Preservation
of seniority

39c.—(1) An employee who intends to resume full-time employment upon ceasing to be an elected official shall so advise the employer, and, upon returning to work, the employer shall reinstate or continue the employee in his position or provide alternative work of a comparable nature at not less than the wages of the employee at the time the leave of absence began and without loss of seniority or benefits accrued to the expiration of the term of office other than seniority or benefits accrued during the times that the employee was on leave.

Idem

(2) Where the employer has suspended or discontinued operations during the leave of absence of the employee and has not resumed operations upon the expiry thereof, the employer shall, upon resumption of operations, reinstate the employee to his employment or to alternate work in accordance with an established seniority system or practice of the employer in existence at the time the leave of absence began with no loss of seniority or benefits accrued to the commencement of the leave of absence, and in the absence of such a system or practice shall reinstate the employee in accordance with subsection 1.

Employment
standards
officer
may make
order

39d. Where an employer fails to comply with the provisions of this Part, an employment standards officer may order what action, if any, the employer shall take or what he shall refrain from doing in order to constitute compliance with this Part and may order what compensation shall be paid by the employer to the Director, in trust, for the employee.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Employment Standards Amendment Act, 1978*.

An Act to amend
The Employment Standards
Act, 1974

1st Reading

May 25th, 1978

2nd Reading

3rd Reading

MR. MACKENZIE

(Private Member's Bill)

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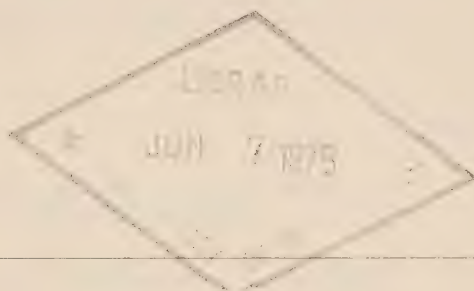
BILL 98

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**Government
Publications**

**An Act to provide for Residence Requirements
for Construction Workers Employed in Ontario**



MR. SAMIS

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to protect employment opportunities in the construction industry in areas of the Province designated by the Minister for the permanent residents of Ontario.

BILL 98

1978

**An Act to provide for
Residence Requirements for
Construction Workers Employed in Ontario**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "certificate" means a certificate of permanent residence in Ontario issued under this Act;
- (b) "construction" means a construction as defined by *The Construction Safety Act, 1973*; 1973, c. 47
- (c) "designated area" means an administrative area of the Province of Ontario designated by the Minister under section 3;
- (d) "Minister" means the Minister of Labour;
- (e) "project" means a project, shaft, trench and tunnel as defined by *The Construction Safety Act, 1973*;
- (f) "resident" means a person who has resided in Ontario for twelve consecutive months prior to his application for a certificate or a person who has resided in Ontario for less than twelve months but submits to the Minister information prescribed by the regulations as proof of a settled intention to reside in Ontario permanently.

2.—(1) Except as provided in this Act, no person shall employ a person other than a resident holding a certificate to work in or in connection with construction of a project in a designated area. Residence
requirement

Exception:
prior
agreement (2) Subsection 1 shall not apply to a person employed or to be employed under a contract or an agreement entered into before the 31st day of May, 1978.

Idem:
prior
employment (3) Subsection 1 shall not apply if it is shown to the satisfaction of the Minister that a person to be employed has, after the 30th day of April, 1977 and prior to the 30th day of April, 1978, been employed in construction of a project or projects in Ontario for no less than 120 days.

Designated
areas **3.** The Minister may designate areas of Ontario in which sections 2 and 5 shall apply and the Minister may terminate such designation as seems advisable.

Certificate **4.—**(1) Any person wishing to obtain employment in construction of a project in a designated area may apply to the Minister for a certificate of residence and, upon presentation by the person of such proof as the Minister may, by regulations, require that he is a resident, the Minister shall issue a certificate to him.

Idem,
validity
and
renewal (2) A certificate shall be valid during the calendar year in which it was issued and it may be renewed for a successive year upon an application made to the Minister during the month of November of a year in which it is to expire.

Offence **5.—**(1) Every person who contravenes section 2 is guilty of an offence and on summary conviction is liable to a fine in an amount equal to the amount of wages paid by such person in violation of this Act or \$200, whichever is the greater.

False
evidence,
penalty
for (2) Every person who knowingly submits false evidence in order to obtain a certificate is guilty of an offence and on summary conviction is liable to a fine in an amount equal to the wages obtained by such person while employed in construction of a project in a designated area or \$200, whichever is the greater.

Regulations **6.** The Minister, subject to the approval of the Lieutenant Governor in Council, may make regulations,

(a) governing the procedure for obtaining a certificate of residence and prescribing the form of the certificates;

(b) prescribing the types of information to be submitted to the Minister as proof that a person is a resident.

7. This Act comes into force on the day it receives Royal Commence-
Assent. ment

8. The short title of this Act is *The Construction Workers Short title
Residence Act, 1978.*

An Act to provide for
Residence Requirements for
Construction Workers
Employed in Ontario

1st Reading

May 25th, 1978

2nd Reading

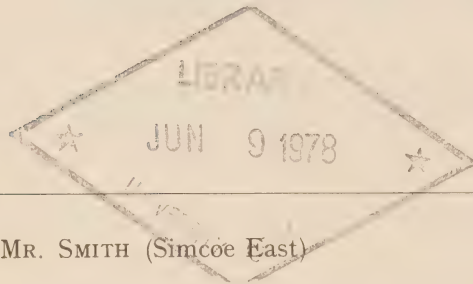
3rd Reading

MR. SAMIS

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act respecting Simcoe Day



MR. SMITH (Simcoe East)

EXPLANATORY NOTE

The purpose of the Bill is to change the name of the public holiday celebrated in many municipalities on the first Monday in August from "Civic Holiday" to Simcoe Day in honour of John Graves Simcoe who was appointed first Lieutenant Governor of Upper Canada on September 12th, 1791, and who convened the first legislative assembly and established the capital of the Province at York, now Toronto.

BILL 99

1978

An Act respecting Simcoe Day

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Where the first Monday in August in any year is ^{Simcoe Day} proclaimed a public holiday in a municipality, the name of the holiday shall be Simcoe Day.
2. Any Act, regulation, proclamation, contract or document that refers to a public holiday by the name of "Civic Holiday" shall be deemed to refer to Simcoe Day. ^{Other references}
3. This Act comes into force on the day it receives ^{Commence-} Royal Assent. ^{ment}
4. The short title of this Act is *The Simcoe Day Act*, ^{Short title} 1978.

An Act respecting
Simcoe Day

1st Reading

May 29th, 1978

2nd Reading

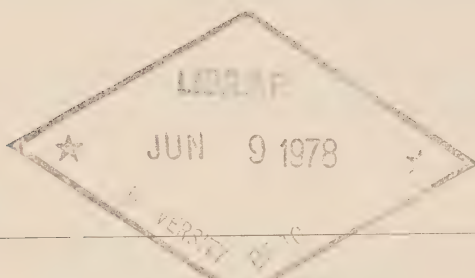
3rd Reading

MR. SMITH (Simcoe East)

(*Private Member's Bill*)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Consumer Protection Act



MR. NEWMAN
(Windsor-Walkerville)

EXPLANATORY NOTE

This Bill requires that every product offered for sale by a retailer that is marked with the universal product code must also be clearly marked with its individual purchase price.

BILL 100

1978

An Act to amend The Consumer Protection Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Consumer Protection Act*, being chapter 82 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 47a,
enacted

47a.—(1) In this section,

Interpre-
tation

- (a) “computer code” means a marking that is designed to be read and recorded by a computer device for the purpose of calculating the purchase price of a product offered for sale and includes the universal product code;
- (b) “product” means an item of goods;
- (c) “retail seller” means a person who offers a product for sale but not for resale.

(2) No retail seller shall offer for sale a product that is marked with a computer code unless the individual purchase price of such product is clearly expressed on the product, its wrapper or container. Individual
purchase
price
marking
required

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment
3. The short title of this Act is *The Consumer Protection Amendment Act, 1978*. Short title

An Act to amend
The Consumer Protection Act

1st Reading

May 29th, 1978

2nd Reading

3rd Reading

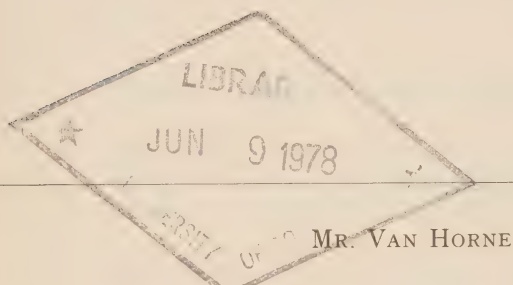
MR. NEWMAN
(Windsor-Walkerville)

(Private Member's Bill)

CADEN
XB
- 850

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide for the Disclosure of Information
relating to the Cost of Government Programs**



EXPLANATORY NOTE

The purpose of this Bill is to provide for the public disclosure of the cost information upon which decisions to undertake certain government programs are based. The Bill requires that the estimated total cost of each program be disclosed and provides for additional scrutiny of program operations if the estimated total cost is exceeded.

BILL 101

1978

An Act to provide for the Disclosure of Information relating to the Cost of Government Programs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Auditor" means the Provincial Auditor;
- (b) "program" means a program, project, work, undertaking or service, the implementation of which is considered and approved by the Executive Council;
- (c) "public money" has the same meaning as in *The Financial Administration Act*. R.S.O. 1970,
c. 166

2.—(1) Where the Executive Council approves the implementation of a program that is to be financed wholly or in part with public money from the Consolidated Revenue Fund, the Minister responsible for the program shall forthwith prepare and make publicly available a compendium of cost information in respect of the program. Compendium
of cost
information

(2) The compendium of cost information shall contain a summary of the cost information upon which the decision to implement the program was based and without limiting the generality of the foregoing, the compendium shall contain the following, Contents of
compendium

- (a) the estimated total cost of the program;
- (b) a description of the methods of cost measurement;
- (c) a statement of the purposes and objectives of the program.

Cost
excess
statement

3.—(1) Where the Minister responsible for a program is informed that the cost of the program will exceed or has exceeded the estimated total cost of the program as stated in the compendium of cost information, the Minister shall inquire into the reasons for the increased cost and shall prepare and make publicly available a cost excess statement setting forth the reasons for the cost increase, the amount of excess cost incurred, if any, at the time the statement was prepared, and the revised estimated total cost of the program.

Supple-
mentary
cost excess
statement

(2) Where the Minister is informed that the cost of a program will exceed or has exceeded the revised estimated total cost of the program, the Minister shall forthwith make an inquiry into the reasons therefor and prepare and make available a supplementary cost excess statement setting forth the reasons for the additional cost increase, the amount of excess cost incurred, and the revised estimated total cost of the program.

Auditor's
investi-
gation

4. The Auditor may make an inquiry into any program for which a compendium of cost information is prepared and where a cost excess statement or supplementary cost excess statement is required under this Act, the Auditor shall make an inquiry for the purpose of,

- (a) determining the adequacy of the cost analysis, cost forecasting and cost control methods used in the planning and administration of the program; and
- (b) recommending improvements in these methods to assure more efficient and effective program management,

and the auditor shall report the findings and recommendations arising from such an inquiry to the Minister responsible for the administration of the program and to the standing Public Accounts Committee of the Assembly.

When
compendium,
etc., made
publicly
available

5.—(1) For the purposes of this Act, a compendium or statement shall be deemed to have been made publicly available when,

- (a) the compendium or statement has been laid before the Assembly;
- (b) a copy of the compendium or statement has been filed with the Office of the Auditor;
- (c) a copy of the compendium or statement has been provided to each member of the standing Public Accounts Committee of the Assembly; and

- (d) a copy of the compendium or statement is made available for public inspection and reproduction during normal office hours at the central office of the Ministry responsible for administering the program.

(2) If a compendium of cost information, cost excess ^{Idem} statement or supplementary cost excess statement is prepared and the Assembly is not in session, copies of the compendium or statement shall be made available pursuant to subsection 1 notwithstanding the Assembly is not in session and such compendium or statement shall be laid before the Assembly at the commencement of the next ensuing session.

6. This Act comes into force on the day it receives Royal ^{Commence-} Assent.
ment

7. The short title of this Act is *The Program Cost Dis-* ^{Short title}
closure Act, 1978.

An Act to provide for the
Disclosure of Information
relating to the Cost of
Government Programs

1st Reading

May 30th, 1978

2nd Reading

3rd Reading

MR. VAN HORNE

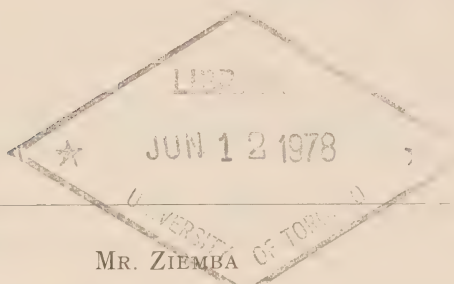
(Private Member's Bill)

BILL 102

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to regulate
Hours of Operation of Retail Businesses**



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to provide for maximum hours of operation of retail businesses in Ontario.

BILL 102

1978

An Act to regulate Hours of Operation of Retail Businesses

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "business day" means any day that is not a holiday as defined in *The Retail Business Holidays Act, 1975 (2nd Session)* or proclaimed as a civic holiday; ^{1975 (2nd Sess.), c. 9}
- (b) "retail business" means the selling or offering for sale of goods or services by retail;
- (c) "retail business establishment" means the premises where a retail business is carried on.

2.—(1) No person shall carry on a retail business or admit any member of the public to a retail business establishment before the hour of 8 o'clock in the forenoon or after the hour of 6 o'clock in the afternoon on a business day. Hours
designated
for business

(2) Notwithstanding subsection 1, a person operating a retail business may, on no more than two business days in each week, carry on a retail business and admit members of the public to the retail business establishment between the hours of 8 o'clock in the forenoon and 9 o'clock in the afternoon. Longer
hours

3. Section 2 does not apply to the carrying on of any retail business if the carrying on of that business is exempt from section 2 of *The Retail Business Holidays Act, 1975 (2nd Session)*, except that where a retail business is closed on a Saturday instead of a Sunday by reason of subsection 4 of section 3 of that Act, Sunday shall be deemed to be a business day for the purposes of this Act, and section 2 of this Act applies to the retail business. Exemptions

1975
(2nd Sess.),
c. 9

Exemptions:
Order in
Council

4. The Lieutenant Governor in Council may exempt any retail business or retail business establishment or any class of retail business or retail business establishment from the operation of this Act.

Powers of
municipi-
palities

5. Any provision of any other Act empowering a municipality to regulate the closing or the hours of operation of a retail business does not include the power to permit the carrying on of retail business where to do so is prohibited by this Act, but nothing in this Act shall be construed to affect any power conferred on a municipality to prohibit the carrying on of a retail business when it is not prohibited by this Act.

Penalty

6. Every person who contravenes section 2 is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000.

Commence-
ment

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. The short title of this Act is *The Retail Business Hours Act, 1978*.

An Act to regulate
Hours of Operation of Retail Businesses

1st Reading

May 30th, 1978

2nd Reading

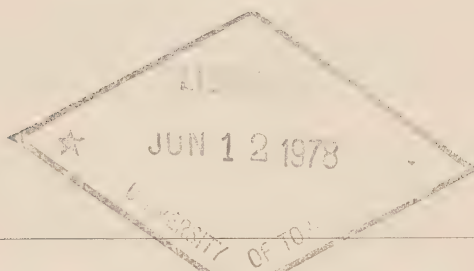
3rd Reading

MR. ZIEMBA

(*Private Member's Bill*)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to revise The Condominium Act



THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations

EXPLANATORY NOTE

The Bill is a revision of *The Condominium Act*.

The significant revisions are as follows:

1. Several matters that were not considered to be fundamental but were permitted to be included in the declaration are now to be dealt with by by-law. The declaration can be amended only with the consent of all owners and encumbrancers. The by-laws can be amended by varying percentage of owners depending on the nature and purpose of the by-law. Existing declarations will be able to be amended by by-law in respect of those matters which may now be dealt with by by-law.
2. The concept of a "special by-law" is being introduced and special by-law is defined.
3. The existence of a corporate seal is being made mandatory.
4. Provision is being made empowering the corporation to sue on behalf of individual owners and on its own behalf in respect of individual units. The corporation may also be sued as a representative of the owners in respect of certain matters.
5. There is elaboration in respect of the rules and proceedings governing the board of directors as well as the qualifications for a director. Some new provisions deal with age and financial qualifications for directors, the creation of an executive committee of directors and disclosure of interest by directors.
6. New provisions provide that a quorum for transaction of business by owners is 50 per cent of the owners and that all voting by owners is on the basis of one vote per unit.
7. Provision is made for the corporation to maintain liability insurance to indemnify directors and officers who act in good faith with reasonable care.
8. The section dealing with fire and other peril insurance has been greatly expanded.
9. The appointment of auditors is made mandatory and provisions are made for the appointment and removal of auditors. The duties of the auditors are set out. There is also provision made to set up an audit committee of the directors.
10. A reserve fund is made mandatory. Rules are set out in respect of the use and maintenance of these funds.
11. Various agreements of a specified nature, made while the majority of the directors were elected when the declarant owned the majority of units, are deemed to expire in twelve months unless ratified by the directors at a time when the majority of directors were elected after the declarant ceased to be owner of the majority of units.
12. After substantial damage, instead of requiring a vote of owners to repair, the corporation is to be required to repair unless there is a vote to terminate the corporation.

13. Provision is made that where an owner is in default of payment to the corporation, the corporation may direct a lessee to pay to the corporation sufficient amounts out of rent payments to eliminate the default.
14. A ten day cooling-off period is provided for purchasers of new units.
15. Provision is made for a bureau whose function will be to assist condominium corporations and owners by providing advice, information and a forum for settling disputes.

In addition to the foregoing major changes, various other modifications and amendments are being made and there is some clarification of existing provisions.

BILL 103

1978

An Act to revise The Condominium Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “board” means the board of directors of a corporation;
- (b) “buildings” means the buildings included in a property;
- (c) “bureau” means the corporation designated under section 57;
- (d) “by-law” means a by-law of a corporation;
- (e) “claim” includes a right, title, interest, encumbrance, or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;
- (f) “common elements” means all the property except the units;
- (g) “common expenses” means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in this Act or in a declaration;
- (h) “common interest” means the interest in the common elements appurtenant to a unit;
- (i) “common surplus” means the excess of all receipts of the corporation, including the rents, profits and revenues on account of the common element, over the expenses;

- (j) "corporation" means a corporation created by this Act;
- (k) "declarant" means the owner or owners in fee simple of the land described in the description at the time of registration of a declaration and description of the land, and includes any successor or assignee of such owner or owners but does not include a *bona fide* purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;
- (l) "declaration" means the declaration specified in section 3, and includes any amendments;
- (m) "description" means the description specified in section 4;
- (n) "encumbrance" means a claim that secures the payment of money or the performance of any other obligation, and includes a charge under *The Land Titles Act*, a mortgage and a lien;
- (o) "mortgage" includes charge and "mortgagee" includes chargee;
- (p) "owner" means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;
- (q) "prescribed" means prescribed by the regulations;
- (r) "property" means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;
- (s) "proposed unit" means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a declaration and description have been registered in respect of the land;
- (t) "records" shall include those items enumerated in subsection 3 of section 27 and financial records prepared on behalf of the corporation, minutes of annual meetings and board meetings, as well as any amendments to the declaration, by-laws and rules;

(u) "registered" means registered under *The Land Titles Act* or *The Registry Act*; R.S.O. 1970, cc. 234, 409

(v) "regulations" means the regulations made under this Act;

(w) "special by-law" means a by-law that is not effective until it is,

(i) passed by the board, and

(ii) confirmed, with or without variation, by a vote of owners who own not less than two-thirds of the units at a meeting duly called for that purpose;

(x) "surveyor" means an Ontario land surveyor registered under *The Surveyors Act*; R.S.O. 1970, c. 452

(y) "unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and description are registered. R.S.O. 1970, c. 77, s. 1 (1); 1974, c. 133, s. 1, *amended*.

(2) For the purposes of this Act, the ownership of land includes the ownership of space. Ownership of land R.S.O. 1970, c. 77, s. 1 (2).

DECLARATION AND DESCRIPTION

2.—(1) A property shall comprise only freehold land and interests, if any, appurtenant to that land. Freehold land only

(2) A declaration and description may be registered by or on behalf of the owner in fee simple of the land described in the description. Who may register

(3) Where the land and the interests appurtenant to the land described in the description are not entirely within one land titles or registry division or not entirely under *The Land Titles Act* or *The Registry Act*, the description shall not be registered. Land must be in one division

(4) Where the land described in a description is situated in a provisional judicial district or in a county, part of a county, city or separated town to which *The Land Titles Act* applies, the declaration and description must be registered under that Act. Where land in land titles area

Where land
not in land
titles area
R.S.O. 1970,
cc. 234, 59, 409

(5) Where the land described in a description is situate in a county, part of a county, city or separated town to which *The Land Titles Act* does not apply, a certificate of title under *The Certification of Titles Act* showing the owner by whom the declaration and description are being registered as the owner in fee simple of the land shall be registered under *The Registry Act* before the declaration and description are registered.

Effect of
registration

(6) Upon registration of a declaration and description, the land and the interests appurtenant to the land described in the description are governed by this Act. R.S.O. 1970, c. 77, s. 2.

What
declaration
must contain

3.—(1) A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description and unless it contains,

- (a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;
- (b) the consent, in the prescribed form, of every person having a registered mortgage, against the land or interests appurtenant to the land described in the description;
- (c) a statement, expressed in percentages, of the proportions of the common interests;
- (d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;
- (e) an address for service and a municipal address for the corporation; and
- (f) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners. R.S.O. 1970, c. 77, s. 3 (1); 1974, c. 133, s. 2 (1), *amended*.

Where consent
not to be
withheld

(2) The consent mentioned in clause *b* of subsection 1 shall not be withheld by reason only of the failure of the proposed declarant to enter into a specified number of agreements of purchase and sale for the sale of proposed units. *New*.

(3) In addition to the matters mentioned in subsection 1, ^{What declaration may contain} a declaration may contain,

- (a) a specification of common expenses;
- (b) provisions respecting the occupation and use of the units and common elements;
- (c) provisions restricting gifts, leases and sales of the units and common interests;
- (d) a specification of duties of the corporation consistent with its objects; and
- (e) a specification of any allocation of the obligations to repair and to maintain the units and common elements. R.S.O. 1970, c. 77, s. 3 (2), *amended*.

(4) Subject to subsection 5, the declaration may be ^{Amendment of declaration} amended only with the consent of all owners and all persons having registered encumbrances against the units and common interests. R.S.O. 1970, c. 77, s. 3 (3), *amended*.

(5) Where any of the following matters are mentioned in ^{Idem} the declaration, those matters may be dealt with in accordance with this Act, and the declaration in respect of any matters so dealt with may be amended in the same manner:

- 1. The number, qualifications, nomination, election, term of office and remuneration of the directors.
- 2. Meetings, quorum and functions of the board.
- 3. Functions of officers of the board.
- 4. The assessment and collection of contributions towards the common expenses. *New*.

(6) When a declaration is amended, the corporation shall ^{Registration} register a copy of the amendment executed by all the owners and all persons having registered encumbrances against the units and common interests, and until the copy is registered the amendment is ineffective. R.S.O. 1970, c. 77, s. 3 (4).

(7) Notwithstanding subsections 4 and 6, the corporation ^{Change of address for service} may by resolution of the board change its address for service and the change does not take effect until a notice thereof in the prescribed form is registered.

(8) The corporation, on at least seven days notice to every ^{Amendment by judge} owner and mortgagee, or an owner, on at least seven days

notice to the corporation and every other owner and mortgagee, may apply to a judge of the county or district court for an order amending the declaration or description and the judge, if he is satisfied that an amendment is necessary or desirable to correct an error or inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

Registration

(9) An amendment to a declaration or description made by an order under subsection 8 is ineffective until a certified copy of the order is registered. 1974, c. 133, s. 2 (2), *amended*.

What
description
must contain

4.—(1) A description shall contain,

- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
- (b) structural plans of the buildings;
- (c) a specification of the boundaries of each unit by reference to the buildings;
- (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
- (e) a certificate of a surveyor that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
- (f) a description of any interests appurtenant to the land that are included in the property,

prepared in accordance with the regulations.

Approval of
description

(2) A description shall not be registered unless it has been approved in accordance with the regulations. R.S.O. 1970, c. 77, s. 4.

REGISTRATION

Index

5.—(1) Every land registrar in whose office a declaration and description are registered shall keep an index in the prescribed form to be known as the "Condominium Corporations Index".

(2) Where a land titles office is combined with a registry office, one index under subsection 1 shall be kept for all declarations and descriptions registered in the combined offices.

Combined
offices

(3) Every land registrar in whose office a declaration and description are registered shall keep a register in the prescribed form to be known as the "Condominium Register".

Condominium
Register

(4) Declarations, descriptions, by-laws, notices of termination, and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with this Act and the regulations, but, except as otherwise provided by this Act and the regulations, *The Land Titles Act* or *The Registry Act*, as the case may be, applies in respect of property governed by this Act. R.S.O. 1970, c. 77, s. 5; 1974, c. 133, s. 3.

This Act
to govern
registrations.
etc.

R.S.O. 1970,
cc. 234, 409

UNITS AND COMMON ELEMENTS

6.—(1) Units and common interests are real property for all purposes.

Nature of
units and
common
interests

(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of his unit.

Ownership
of units

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

Dangerous
activities

(4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. R.S.O. 1970, c. 77, s. 6.

Right to
entry

7.—(1) The owners are tenants in common of the common elements.

Ownership
of common
elements

(2) An undivided interest in the common elements is appurtenant to each unit.

Common
interests

(3) The proportions of the common interests are those expressed in the declaration.

Proportions

(4) Subject to this Act, the declaration and the by-laws, each owner may make reasonable use of the common elements.

Use of
common
elements

(5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument

Ownership
not to be
separated

that purports to separate the ownership of a unit from a common interest is void.

No division (6) Except as provided by this Act, the common elements shall not be partitioned or divided.

Encumbrances not enforceable (7) No encumbrance is enforceable against the common elements after the declaration and description are registered.

Saving (8) Where, but for subsection 7, an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

Discharge (9) Any unit and common interest may be discharged from such an encumbrance by payments to the claimant of a portion of the sum claimed, determined by the proportions specified in the declaration for sharing the common expenses.

Idem (10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations. R.S.O. 1970, c. 77, s. 7 (1-10).

Assessment (11) For the purposes of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel except for those parts of the common elements that are leased for business purposes under section 9 upon which the lessee carries on an undertaking for gain that will constitute separate parcels for business assessment under *The Assessment Act*. R.S.O. 1970, c. 77, s. 7 (11), *amended*.

Where corporation deemed to be occupier (12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements. R.S.O. 1970, c. 77, s. 7 (12).

EASEMENTS

Easements appurtenant to units **8.—**(1) The following easements are appurtenant to each unit:

1. Where a building or any part of a building,

(a) moves after registration of the declaration and description; or

- (b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the by-laws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.

2. An easement for the provision of any service through any installation in the common elements or any other unit.
3. An easement for support by the common elements and any other unit capable of providing support.

(2) The following easements are appurtenant to the common elements: Easements appurtenant to common elements

1. An easement for the provision of any service through any installation in any unit.
2. An easement for support by any unit capable of providing support. R.S.O. 1970, c. 77, s. 8.

9.—(1) The corporation may, by special by-law,

Easements and leases of common elements

- (a) lease any part of the common elements, except any part that the declaration specifies is to be used by the owners of one or more designated units and not by all the owners; and
- (b) grant or transfer an easement or licence through the common elements.

(2) A lease or grant or transfer or an easement or licence mentioned in subsection 1, signed by the authorized officers of the corporation under its seal, affects the interest of every owner in the common elements as if the lease, grant or transfer had been executed by him, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant or transfer was authorized by a special by-law of the corporation. 1974, c. 133, s. 4, *amended*. Binding on all owners

CORPORATION

- Creation** **10.**—(1) The registration of a declaration and description creates a corporation without share capital whose members are the owners from time to time. R.S.O. 1970, c. 77, s. 9 (1).
- Name of corporation** (2) The land registrar shall assign a name to each corporation or proposed corporation in accordance with the regulations. 1974, c. 133, s. 5 (1).
- R.S.O. 1970,
cc. 89, 280
1976, c. 66
not to
apply (3) *The Corporations Act, The Corporations Information Act, 1976* and the provisions respecting mortmain of *The Mortmain and Charitable Uses Act* do not apply to the corporation. R.S.O. 1970, c. 77, s. 9 (3).
- Corporation seal** **11.**—(1) The corporation shall have a seal that shall be adopted and may be changed by resolution of the directors.
- Idem** (2) The name of the corporation shall appear in legible characters on the seal. *New.*
- Objects** **12.**—(1) The objects of the corporation are to manage the property and any assets of the corporation. R.S.O. 1970, c. 77, s. 9 (4).
- Corporation duty** (2) The corporation has a duty to enforce the by-laws and to control, manage and administer the common elements and the assets of the condominium corporation. *New.*
- Duty to effect compliance** (3) The corporation has a duty to effect compliance by the owners with this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 9 (12), *amended.*
- Duties** (4) The declaration or the by-laws may specify duties of the corporation consistent with its objects, responsibilities and duties. R.S.O. 1970, c. 77, s. 9 (13), *amended.*
- Right to performance of duties** (5) Each owner and each person having an encumbrance against a unit and common element has the right to the performance of any duty of the corporation specified by this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 9 (14), *amended.*
- Real and personal property** **13.**—(1) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.
- Interest in assets** (2) The owners of the corporation share the assets of the corporation in the same proportions as the proportions of

their common interests in accordance with this Act, the declaration and the by-laws. R.S.O. 1970, c. 77, s. 9 (15, 16).

14.—(1) The corporation may, on its own behalf and on behalf of any owner, sue for and recover damages and costs in respect of any damage to common elements, the assets of the corporation or individual units, and the legal and court costs in any such actions brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected. Action by corporation

(2) The corporation may sue on its own behalf and on behalf of any owner in respect of matters affecting individual units, notwithstanding that the corporation was not a party to the contract in respect of which the action is brought, and the legal and court costs in an action brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected. *New.* Idem

(3) Any judgment for payment in favour of the corporation in an action brought on its own behalf is an asset of the corporation. R.S.O. 1970, c. 77, s. 9 (18), *amended.* Actions by corporation respecting common elements

(4) The corporation may, as representative of the owners of the units, be sued in respect of any matter relating to the common elements or assets of the corporation. *New.* Corporation may be sued

(5) Where an action is commenced after this Act comes into force, a judgment for the payment of money against the corporation is also a judgment against each owner at the time of judgment for a portion of the judgment determined by the proportions specified in the declaration for sharing the common interests. Judgment against corporation

(6) Where an action has been commenced before this Act came into force, a judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses. R.S.O. 1970, c. 77, s. 9 (17), *amended.* Idem

15.—(1) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such greater number as the by-laws may provide, elected by the members of the corporation. R.S.O. 1970, c. 77, s. 9 (5), *amended.* Board of directors

Change in
number of
directors

(2) A corporation may by by-law increase or, subject to subsection 1, decrease the number of the directors as set out in its by-laws.

Age of
directors

(3) No person under eighteen years of age shall be a director of the corporation.

Qualifications

(4) No undischarged bankrupt or mentally incompetent person shall be a director and if a director becomes a bankrupt or a mentally incompetent person he thereupon ceases to be a director.

Consent

(5) A person who is elected or appointed a director is not a director unless,

(a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as a director; and

(b) when he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(6) For the purposes of subsection 5, a person who is elected or appointed as director and refuses under clause *a* of that subsection or fails to consent under clause *b* of that subsection shall be deemed not to have been elected or appointed as a director. *New.*

Term

(7) The term of the members of the board shall be three years or such lesser period as the by-laws may provide, but the directors may continue to act until their successors are elected, and directors are eligible for re-election. R.S.O. 1970, c. 77, s. 9 (6), *amended*.

Removal

(8) Any director may be removed before the expiration of his term by a vote of owners who together own a majority of the units and the owners may elect, in accordance with the by-laws dealing with the election of directors, any person qualified to be a member of the board for the remainder of the term of the director removed.

Vacancy

(9) If a vacancy in the membership of the board occurs, other than by way of removal under subsection 8 or as a result of the number of directors being increased, subject to subsection 11, the majority of the remaining members of the board may appoint any person qualified to be a member of the board to fill the vacancy for the remainder of the term. 1974, c. 133, s. 5 (2), *amended*.

(10) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a meeting of the owners duly called for that purpose. Increase

(11) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a meeting of owners to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any owner. *New.* Election when no quorum

16.—(1) A quorum for the transaction of business is a majority of the members of the board or such greater number as the by-laws may provide. R.S.O. 1970, c. 77, s. 9 (8), *amended.* Quorum

(2) Subject to section 17, no business of a corporation shall be transacted by its board except at a meeting of directors at which a quorum of the board is present. Conduct of business

(3) Where there is a vacancy or vacancies in the board, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. Idem

(4) In addition to any other provision in the by-laws of a corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business, the general nature of which is specified in the notice calling the meeting. Calling meetings of directors

(5) In the absence of any other provision in that behalf in the by-laws of the corporation, at least ten days written notice of the time and place for the holding of the meeting shall be given to every director of the corporation, personally or by prepaid mail, addressed to him at his latest address as shown on the records of the corporation. *New.* Notice

17.—(1) Where the number of directors of a corporation is more than six, the directors may elect from among their number an executive committee consisting of not fewer than three, and the directors may delegate to the executive committee any powers of the board, subject to the restrictions, if any, contained in the by-laws or imposed from time to time by the directors. Executive committee

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members. Quorum

(3) No business shall be transacted by an executive committee except at a meeting of its members at which a quorum of the executive committee is present. *New.* Conduct of business

Disclosure
by director
of interest
in contracts

18.—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the corporation, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such interest or information is within his knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum.

Interest
to be
material

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless the interest and the contract or transaction are both material.

When
declaration
of interest
to be made

(3) The declaration required in subsection 1 shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the corporation's business would not require approval by the directors or owners, at the first meeting of the directors held after the director becomes aware of it.

Effect of
declaration

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the director, if he was acting honestly and in good faith at the time the contract or transaction was entered into, is not by reason only of his holding the office of director accountable to the corporation or to its owners for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interest of the corporation at the time the contract or transaction was entered into, is not voidable by reason only of the director's interest therein.

(5) Notwithstanding anything in this section, a director, Confirmation by owners if he was acting honestly and in good faith, is not accountable to the corporation or to the owners for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it was in the best interest of the corporation at the time it was entered into, is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of the owners duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

(6) For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the corporation is a sufficient declaration of interest in relation to any contract so made. *New.* General notice of interest

19.—(1) A corporation shall hold an annual meeting of the owners not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any owner or any mortgagee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation. Annual meetings

(2) The board, or any mortgagee holding mortgages on not less than 15 per cent of the units, may at any time call a meeting of the owners of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting. 1974, c. 133, s. 6, *part, amended.* Other meetings

(3) A quorum for the transaction of business at a meeting of owners is those owners present in person or represented by proxy owning 50 per cent of the units. *New.* Quorum

20.—(1) The board shall, upon receipt of a requisition in writing made by owners who together own at least 15 per cent of the units, call and hold a meeting of the owners and if the meeting is not called and held within thirty days of the receipt of the requisition, any of the requisitionists may call Requisition for owners' meeting

the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition.

Requisition (2) The requisition shall state the nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the address for service of the corporation. 1974, c. 133, s. 6, *part, amended*.

Notice **21.**—(1) At least ten days written notice of every meeting of the owners specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given to each owner or mortgagee entitled to vote, personally or by prepaid mail addressed to him at the address provided under subsection 2.

Sufficient notice (2) The corporation shall maintain a record upon which shall be entered each owner or mortgagee who notifies the corporation of his entitlement to vote and of his address for service, and the notice of a meeting required by subsection 1 shall be deemed to be sufficiently given if given in accordance with subsection 1 to those persons entered on the record twelve days before the date of the meeting. 1974, c. 133, s. 6, *part, amended*.

Right to vote (3) A mortgagee who receives a notice shall, in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and the owner of his intention to exercise such right at least two days before the date specified in the notice for the meeting. 1974, c. 133, s. 6, *part, amended*.

Records **22.** The corporation shall keep adequate records, and any owner may inspect the records on reasonable notice and at any reasonable time. R.S.O. 1970, c. 77, s. 9 (11), *amended*.

Voting **23.**—(1) All voting by owners shall be on the basis of one vote per unit and, where two or more persons entitled to vote in respect of one unit disagree on their vote, the vote in respect of that unit shall not be counted.

Idem (2) On a show of hands or on a poll, votes may be given either personally or by proxy.

Proxy (3) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting.

Idem (4) A proxy need not be an owner.

Where not entitled to vote (5) Except where, under this Act or the by-laws of the corporation, a unanimous vote of all the owners is required,

no owner is entitled to vote at any meeting unless all contributions payable in respect of his unit have been paid.

(6) Unless otherwise provided in this Act, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast. *New.* Majority voting

24.—(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors and the same person may hold two or more offices. Officers

(2) In the absence of other provisions in that behalf in the by-laws, the directors, Election and appointment

(a) shall elect the president from among themselves;

(b) shall appoint or elect the secretary; and

(c) may appoint or elect one or more vice-presidents or other officers. *New.*

25.—(1) Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the corporation, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. *New.* Standards of care, etc., of directors

(2) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in his election or qualifications. *R.S.O. 1970, c. 77, s. 9 (9).* Defects

26.—(1) Subject to subsection 2, the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against, Indemnification of directors

(a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation.

Idem

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant.

Insurance

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of subsection 1 of section 25. *New.*

Election
of new
board

27.—(1) The board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the owners to elect a new board, and such meeting shall be held within twenty-one days after the calling of the meeting.

Owner,
etc., may
call
meeting

(2) If the meeting referred to in subsection 1 is not called within the time provided for by that subsection, any owner or any mortgagee entitled to vote may call the meeting. 1974, c. 133, s. 6, *part, amended.*

Things to
be turned
over to
the board

(3) At the meeting required under subsection 1, the declarant shall give to the board elected at that meeting,

- (a) the seal of the corporation;
- (b) the minute book for the corporation, containing the most current copies of the declaration, by-laws, rules and regulations and any amendments thereto;
- (c) copies of all legal agreements entered into by the declarant or his representatives on behalf of the corporation, including the management contracts, deeds, leases, licences and those items set out in subsection 6 of section 53;
- (d) a record maintained under subsection 2 of section 21;
- (e) the warranties and guarantees for all the equipment, fixtures and chattels included in the sale of either

the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;

- (f) the as-built architectural, structural, engineering, mechanical and plumbing plans, plus the plans for underground site service, site grading, drainage, cable television and landscaping and any other plans for which the condominium corporation has the responsibility under this Act, declaration or by-laws for repair and maintenance;
- (g) an audited financial statement prepared not earlier than thirty days prior to the meeting;
- (h) a table depicting the maintenance responsibilities and detailing whether the corporation or the unit owners are responsible;
- (i) bills of sale or transfers for all items that are assets of the condominium corporation but not part of the real property;
- (j) a list detailing costs and life expectancy of all major capital items in a corporation, including, where applicable, those items set out in subsection 1 of section 37; and
- (k) all financial records of the corporation. *New.*

28.—(1) The corporation shall obtain and maintain insurance on its own behalf and on behalf of the owners of the units and common elements, excluding improvements and betterments made or acquired by an owner, against major perils to the replacement cost thereof, and against such other perils as may be specified by the declaration or by-laws, and for this purpose the corporation shall be deemed to have an insurable interest in the units and common elements.

(2) Any payment by an insurer under a policy of insurance entered into under subsection 1 shall, notwithstanding the terms of the policy, be paid to the order of insurance trustees, if any, or otherwise shall be paid to or to the order of the corporation and, subject to subsection 2 of section 43, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may be effected lawfully.

Insurance
under subs. 1
not other
insurance

(3) Insurance obtained and maintained by a corporation under subsection 1 shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to his unit or his interest in the common elements and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective.

Insurance
non-
contributory
R.S.O. 1970,
c. 224

(4) Notwithstanding section 124 of *The Insurance Act* or the provisions of the policy, a policy of insurance issued under subsection 1 and any other policy of insurance, except another policy issued under subsection 1, are not liable to be brought into contribution with each other.

Liability
insurance

(5) The corporation shall obtain and maintain insurance against its liability resulting from breach of duty as occupier of the common elements or arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles, in addition to such other insurance as may be specified in the declaration or by-laws.

Act of
person does
not breach
policy

(6) Notwithstanding the terms of a policy issued under subsection 1, no act of any person shall be deemed to be a breach of the conditions of the policy where such act is prejudicial to the interests of the corporation or the owners.

Provision
for notice

(7) A policy of insurance issued under subsection 1 shall be deemed to include provision for sixty days notice sent by registered mail to be given by the insurer to the corporation and to the insurance trustees, if any, in the event of termination of the insurance by the insurer.

Application
of section

(8) In the event that any provision of a policy issued under subsection 1 or any part of *The Insurance Act* is in conflict or inconsistent with this section or any part thereof, the provisions of this section shall apply.

Capacity to
maintain
insurance

(9) Nothing in this section shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of any insurable interest.

Insurance
money to be
used for
repairs
R.S.O. 1970,
c. 279

(10) Notwithstanding any provision in a mortgage and notwithstanding subsection 2 of section 6 of *The Mortgages Act*, a mortgagee shall not require that any money received on an insurance of the property or any part thereof be applied in or towards the discharge of the money due under his mortgage and any such requirement is void.

(11) For the purposes of subsection 1, "major perils" means ^{Interpre-} the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious mischief. R.S.O. 1970, c. 77, s. 15, *amended*.

BY-LAWS AND RESOLUTIONS

29.—(1) The board may pass by-laws, not contrary to ^{By-laws} this Act or to the declaration,

- (a) to govern the number, qualification, nomination, election, term of office and remuneration of the directors;
- (b) to regulate the meeting, quorum and functions of the board;
- (c) to govern the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (d) to govern the management of the property;
- (e) to govern the maintenance of the units and common elements;
- (f) to govern the use and management of the assets of the corporation;
- (g) specifying duties of the corporation;
- (h) to govern the assessment and collection of contributions towards the common expenses;
- (i) authorizing the borrowing of money to carry out the objects and duties of the corporation; and
- (j) respecting the conduct generally of the affairs of the corporation.

(2) Subject to subsection 5, a by-law passed under sub- ^{Confirmation} section 1 is not effective until it is confirmed, with or without variation, by two-thirds of the votes cast at a meeting of the owners duly called for that purpose.

(3) A by-law relating to the remuneration of a director ^{Remunera-} or directors shall fix the remuneration and the period for ^{tion of} which it is to be paid. *New.*

By-laws
must be
reasonable

(4) The by-laws shall be reasonable and consistent with this Act and the declaration.

Registration

(5) When a by-law or special by-law is made by the corporation, the corporation shall register a copy of the by-law or special by-law together with a certificate executed by the corporation that the by-law was made in accordance with this Act, the declaration and the by-laws, and until the copy and certificate are registered the by-law is ineffective. R.S.O. 1970, c. 77, s. 10 (2, 3).

RULES GOVERNING USE OF COMMON ELEMENTS

House
rules

30.—(1) The board may make rules respecting the use of common elements and units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of other units. R.S.O. 1970, c. 77, s. 11 (1); 1974, c. 133, s. 8, *amended*.

Idem

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

Compliance
and
enforcement

(3) The rules shall be complied with and enforced in the same manner as the by-laws. R.S.O. 1970, c. 77, s. 11 (2, 3).

When rules
effective

(4) Subject to subsection 5, any rule made under subsection 1 shall be effective thirty days after notice thereof has been given to each owner unless the board is in receipt of a requisition in writing made under section 20 requiring a meeting of owners to consider the rules.

Idem

(5) If a meeting of owners is required, the rule made under subsection 1 shall become effective only upon approval at such meeting of owners.

Owners
amending or
repealing
rules

(6) The owners may at any time after a rule becomes effective amend or repeal a rule at a meeting of owners duly called for that purpose. *New*.

Entry by
canvassers

31. No corporation or servant or agent of a corporation shall restrict reasonable access to the property by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal government or school board for the purpose of canvassing or distributing election material. 1974, c. 133, s. 9.

OBLIGATION OF OWNERS AND OCCUPIERS

Obligations
and rights
of owners,
etc.

32.—(1) Each owner is bound by and shall comply with this Act, the declaration, the by-laws and the rules.

(2) Each owner has a right to the compliance by the other owners with this Act, the declaration, the by-laws and the rules. Idem

(3) The corporation, and every person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 12, *amended*. Right of corporation and encumbrancers

(4) Each person in occupation of a proposed unit is bound by and shall comply with the rules proposed by the proposed declarant. Obligations and rights of occupiers

(5) Each person in occupation of a proposed unit has a right to the compliance by every other occupant of a proposed unit with the rules proposed by the proposed declarant. Idem

(6) The proposed declarant has a duty, until registration of the declaration and description, to effect compliance by occupiers of proposed units with the rules proposed by the declarant. *New*. Duty of proposed declarant

33.—(1) The owners shall contribute towards the common expenses in the proportions specified in the declaration. R.S.O. 1970, c. 77, s. 13 (1). Duty of owners to contribute to common expenses

(2) Any common surplus in a corporation shall be applied either against future common expenses or paid into the reserve fund, but shall not, other than on termination, be distributed to the owners or mortgagees. *New*. Application of common surplus

(3) The obligation of an owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment. R.S.O. 1970, c. 77, s. 13 (3). No avoidance

(4) Where an owner defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection 1 of this section or subsection 7 of section 42, the corporation has a lien for the unpaid amount against that unit and his appurtenant common interest together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collections of the unpaid amount. 1974, c. 133, s. 10, *part*; 1977, c. 67, s. 1 (1), *amended*. Lien

(5) The lien mentioned in subsection 4 expires three months after the default that gave rise to the lien first occurred unless the corporation within that time registers a notice of lien in the prescribed form, and, where the notice is Expiration of lien

registered in accordance with subsection 5 of section 34, no further notice or registration is required in respect of default in payment occurring or continuing after registration. 1977, c. 67, s. 1 (2), *amended*.

Lien
enforcement

(6) The lien may be enforced in the same manner as a mortgage. R.S.O. 1970, c. 77, s. 13 (5).

Discharge

(7) Upon payment of the unpaid amount together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount and upon demand, the corporation shall give the owner a discharge in the prescribed form. 1977, c. 67, s. 1 (3).

Certificate
of lien

(8) Any person acquiring or proposing to acquire an interest in a unit from an owner may request the corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of default in payment thereof, if any, by the owner, together with such statements and information as are prescribed by the regulations, and the certificate binds the corporation as against the person requesting the certificate in respect of any default or otherwise shown in the certificate, as of the day it is given.

Idem

(9) The corporation shall give the certificate and the statements and information referred to in subsection 8 within seven days after its receipt of the request therefor and, where the corporation fails to give the certificate, statements and information within the time prescribed, the corporation shall be deemed, as against the person requesting the certificate, to have given a certificate stating no default. 1974, c. 133, s. 10, *part, amended*.

Fee

(10) The corporation may charge a fee for providing the certificate, statements and information referred to in subsection 8, in the amount prescribed by regulation. *New*.

Lien has
priority

34.—(1) Where a lien created by subsection 4 of section 33 is in respect of a unit for residential purposes, that lien has priority over every registered and unregistered encumbrance notwithstanding that such encumbrance existed prior to the lien arising.

Where subs. 1
does not
apply

(2) Subsection 1 does not apply,

(a) to a lien arising before the 1st day of January, 1978;

(b) in respect of a claim of the Crown other than by way of a mortgage;

- (c) in respect of a claim for taxes, charges, rates or assessments levied or recoverable under *The Municipal Act, The Education Act, 1974, The Local Roads Boards Act, The Statute Labour Act or The Local Improvement Act*; or R.S.O. 1970, c. 284, 256, 445, 255
1974, c. 109
- (d) to such lien or claim that may be designated by regulation. 1977, c. 67, s. 2, *part, amended*.
- (3) Every mortgage of a unit for residential purposes shall be deemed to contain a provision that, Provisions deemed in mortgage
- (a) the mortgagee has the right to collect the owner's contribution towards common expenses and shall forthwith pay any amount so collected to the corporation on behalf of the unit owner;
- (b) the owner's default in the payment of common expenses shall constitute default under the mortgage; and
- (c) the mortgagee shall have the right to pay the owner's contribution towards common expenses that shall from time to time fall due and be unpaid in respect of the mortgaged premises and that such payments together with all reasonable costs, charges and expenses incurred in respect thereto, shall be added to the debt thereby secured and shall be payable forthwith with interest at the rate payable on the mortgage, and, if after demand the owner fails to fully reimburse the mortgagee, the mortgage shall immediately become due and payable at the option of the mortgagee.
- (4) A corporation shall, where so requested by the holder of a mortgage on a unit for residential purposes, provide, free of charge, to the person making the request a written statement setting out, in respect of the unit, the common expenses of the owner and all payments thereof in default. Statement to mortgagee
- (5) Where a lien arises in respect of a unit for residential purposes, the corporation shall, on or before the day a notice of lien is registered, give notice of the lien to every encumbrancer whose encumbrance is registered against the title of the unit, by personal service of the notice or by sending the notice by registered prepaid post addressed to the encumbrancer at his last known address. Notice of lien to be given
- (6) Where notice of lien is not given as provided in subsection 5, then subsection 1 ceases to apply three months after Where notice of lien not given

the default that gave rise to the lien first occurred, provided that where notice is given after registration of notice of lien then the corporation may register another notice of lien, but subsection 1 shall continue to apply to any lien which arose not earlier than three months before the last registration of notice of lien. 1977, c. 67, s. 2, *part, amended*.

AUDITORS AND FINANCIAL STATEMENTS

Auditors

35.—(1) The owners at their first meeting after this Act comes into force shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the owners fail to do so, the board shall forthwith make such appointment or appointments.

Idem

(2) The owners shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

Casual vacancy

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

Removal of auditor

(4) The owners may, by resolution passed by a majority of the votes cast at a meeting duly called for that purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term.

Notice to auditor

(5) Before calling a meeting for the purpose of removing an auditor, the corporation shall, fifteen days or more before the giving of the notice of the meeting, give to the auditor,

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to owners in connection with the meeting.

Right of auditor to make representations

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

(a) his proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or

(c) his resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting, a copy of such representations to each person entitled to receive notice of the meeting.

(7) The remuneration of an auditor appointed by the owners shall be fixed by the owners, or by the board if it is authorized so to do by the owners, and the remuneration of an auditor appointed by the board shall be fixed by the board. Remuneration

(8) If for any reason no auditor is appointed, the court may, on the application of an owner, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services. Appointment by court

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made. Notice of appointment

(10) No person shall be appointed or act as auditor of a corporation who is a director, officer, employee or manager of the corporation, has an interest in contracts of the corporation, is a partner, employer or employee of any director, officer, employee or manager of the corporation. Persons disqualified as auditors

(11) This section does not apply to a corporation where the property consists of less than ten units for residential purposes. *New.* Where section does not apply

36.—(1) The auditor shall make such examination as will enable him to report to the owners as required by subsection 2. Annual audit

(2) The auditor shall make a report to the owners on the financial statement, to be laid before the corporation at any annual meeting during his term of office, and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. Auditor's report

(3) Where the report under subsection 2 does not contain the unqualified opinion required thereby, the auditor shall state in his report the reasons therefor. Idem

Facts
discovered
after
statement

(4) Where facts come to the attention of the board or officers of the corporation that if known prior to the date of the last annual meeting of owners would have required a material adjustment to the financial statement presented to the meeting, the board or officers shall communicate such facts to the auditor who reported to the owners under this section and the board shall forthwith amend the financial statement and send it to the auditor.

Amendment
of auditor's
report

(5) On the receipt of facts furnished under subsection 4 from any other source, the auditor shall, if in his opinion it is necessary, amend his report with respect to the financial statement in accordance with subsection 2 and the board or, if it fails to do so within a reasonable time, the auditor shall mail such amended report to the owners.

Idem

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether, in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein.

Idem

(7) The auditor in his report shall make such statements as he considers necessary if,

- (a) the corporation's financial statement is not in agreement with its accounting records;
- (b) the corporation's financial statement is not in accordance with the requirements of this Act;
- (c) he has not received all the information and explanations that he has required; or
- (d) proper accounting records have not been kept, so far as appears from his examination.

Right of
access, etc.

(8) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanations as, in his opinion, are necessary to enable him to report as required by subsection 2.

Auditor
may attend
owners'
meetings

(9) The auditor of a corporation is entitled to attend any meeting of owners and to receive all notices and other communications related to any such meeting that an owner is entitled to receive and to be heard at any such meeting that

he attends on any part of the business of the meeting that concerns him as auditor.

(10) At any meeting of owners, the auditor, if present, shall answer inquiries directed to him concerning the basis upon which he formed the opinion stated in the report made under subsection 2.

Auditor must answer inquiries at owners' meetings

(11) The financial statement shall be approved by the board and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, and the auditor's report shall be attached to or accompany the financial statement.

Financial statement approved by board

(12) The corporation shall, ten days or more before the date of the annual meeting of owners, send by prepaid mail to each owner at his latest address as shown on the records of the corporation and shall file with the bureau a copy of the financial statement and a copy of the auditor's report.

Corporation to send copies of financial statements, etc., to owners

(13) The board shall lay before each annual meeting of owners,

Statements laid before owners at annual meeting

(a) a financial statement made in accordance with generally accepted accounting principles;

(b) the report of the auditor to the owners; and

(c) such further information respecting the financial position of the corporation as the by-laws of the corporation require. *New.*

RESERVE FUND

37.—(1) In this Act and the regulations, the declaration, by-laws and financial statements prepared in accordance with this Act, the declaration or by-laws, "reserve fund" means a fund set up by the corporation in a special account for major repair and replacement of common elements and assets of the corporation including where applicable without limiting the generality of the foregoing, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators, laundry, recreational and parking facilities.

Reserve fund defined

(2) The corporation shall establish and maintain one or more reserve funds and shall collect from the owners, as part of their contribution towards common expenses, amounts that, calculated on the basis of expected repair and replacement costs and life expectancy of things comprising the common elements and the assets of the corporation,

Reserve fund established and maintained

are reasonably expected to provide sufficient funds for major repair and replacement of common elements and assets of the corporation, but in no event shall the contributions to the reserve fund or funds be less than 5 per cent of the amount required for contributions to the common expenses exclusive of the reserve fund.

Idem

(3) Any fund set up for any of the purposes mentioned in subsection 1 shall be deemed to be a reserve fund notwithstanding that it may not be so designated.

Use of
reserve fund
limited

(4) No part of a reserve fund shall be used except for the purposes for which the fund was established.

Fund not
available for
distribution

(5) The amount of a reserve fund shall constitute an asset of the corporation and shall not be distributed to any owner except on termination of the corporation. *New.*

AUDIT COMMITTEE

Audit
committee
may be
established

38.—(1) Where the number of directors of a corporation is more than six, the directors shall elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation, to hold office until the next annual meeting of the owners.

Auditor
shall submit
financial
statement

(2) The auditor shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board.

Auditor's
right to
appear

(3) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

Committee
convening
at request
of auditor

(4) Upon the request of the auditor, the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the board or members. *New.*

MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

Substantial
alterations

39.—(1) The corporation may by a vote of owners who own 80 per cent of the units make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation may by a vote of the owners make any other addition, alteration or improvement

to or renovation of the common elements or may make any other change in the assets of the corporation. R.S.O. 1970, c. 77, s. 14 (1), *amended*.

(2) A grant or transfer of an easement to the corporation ^{Easement} is as effective as if the corporation owns land capable of being benefitted by the easement. 1974, c. 133, s. 11.

(3) The cost of any addition, alteration or improvement ^{Cost} to or renovation of the common elements and the cost of any substantial change in the assets of the corporation are common expenses. R.S.O. 1970, c. 77, s. 14 (2).

(4) If any substantial addition, alteration or improvement ^{Dissenters} to or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, purchase his unit and common interest. R.S.O. 1970, c. 77, s. 14 (3), *amended*.

(5) Where the corporation and the owner who dissented ^{Arbitration} do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration under *The Arbitrations Act* by serving a notice to that effect on the corporation. R.S.O. 1970, c. 77, s. 14 (4). ^{R.S.O. 1970, c. 25}

AGREEMENTS

40.—(1) The corporation may, by special by-law, terminate, ^{Management agreement} on giving sixty days notice in writing, any agreement between the corporation and any person for the management of the property entered into at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units. 1974, c. 133, s. 12, *part, amended*.

(2) Every agreement for the provision of services on a ^{Agreements expiring} continuing basis, every lease of the common elements or part thereof for business purposes and every agreement for the provision of recreation facilities to the corporation on other than a non-profit basis entered into by a corporation after this Act comes into force and at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units that does not expire within twelve months after its effective date shall be deemed to expire twelve months after its effective date unless, within the twelve month period, the agreement is ratified by the board at a time when the majority of the board members were elected after the declarant ceased to be the registered owner of a majority of the units. *New*.

INVESTIGATION OF RECORDS

Examination
of records

41.—(1) Every person in receipt of money paid to or for the benefit of the corporation shall, upon reasonable notice and during normal business hours, make available for examination by the corporation or any owner or mortgagee, all records relating to the receipt and disposition of such money.

Application
to court

(2) Upon application to a judge of a county or district court by the corporation or any owner, or mortgagee, the judge, if satisfied that the application is made in good faith and that it is *prima facie* in the best interests of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as he considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection 1 and to make such audit of the accounts and records of such person as the judge considers necessary.

Power of
inspector
1971, c. 49

(3) An inspector appointed under subsection 2 has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such investigation or audit as if it were an inquiry under that Act.

Trust
money

(4) All money received for the payment of common expenses relating to a property after the 1st day of April, 1975 shall be held by the person in receipt thereof in trust for the performance of the duties and obligations in respect of which the money is paid, and he shall pay such money into a separate account at a chartered bank or trust company or a loan company or credit union authorized by law to receive money on deposit or a Province of Ontario Savings Office and shall designate the account as a trust account in the name of the corporation. 1974, c. 133, s. 12, *part, amended*.

REPAIRS AND MAINTENANCE

Interpre-
tation

42.—(1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after registration of the declaration and description.

Duty to
repair

(2) Subject to section 43, the corporation shall repair the units and common elements after damage.

Maintenance
of common
elements

(3) The corporation shall maintain the common elements.

Maintenance
of units

(4) Each owner shall maintain his unit. R.S.O. 1970, c. 77, s. 16 (1-4).

(5) Notwithstanding subsections 2, 3 and 4, the declaration may provide that, Declaration may provide otherwise

- (a) each owner shall, subject to section 43, repair his unit after damage;
- (b) the owners shall maintain the common elements or any part of the common elements;
- (c) the corporation shall maintain the units; or
- (d) each owner shall maintain and repair after damage those parts of the common elements of which he has the exclusive use. R.S.O. 1970, c. 77, s. 16 (5), *amended*.

(6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time. R.S.O. 1970, c. 77, s. 16 (6). Where corporation to make repairs for owners

(7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section and the cost of such repairs shall be added to the owner's contribution toward common expenses. R.S.O. 1970, c. 77, s. 16 (7), *amended*. Consent

(8) All warranties given with respect to workmanship and materials furnished to the property shall enure to the benefit of all unit owners from time to time and to the corporation. *New*. Warranties

WHERE DAMAGE OCCURS

43.—(1) Where damage to the building occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to 25 per cent of the buildings. Determination of damage

(2) Where there has been a determination that there has been substantial damage to 25 per cent of the buildings, the corporation shall repair within a reasonable time, unless, within sixty days after the determination made under subsection 1, by a vote of owners who own 80 per cent of the units, the owners vote for termination. R.S.O. 1970, c. 77, s. 17, *amended*. Repair of damage

TERMINATION

44.—(1) Where, under subsection 2 of section 43, the owners vote for termination, the corporation shall, within Notice of termination

ten days of the vote, register a notice of termination in the prescribed form. R.S.O. 1970, c. 77, s. 18 (1), *amended*.

Effect of
registration
of notice

(2) Upon the registration of a notice of termination under subsection 1,

- (a) the government of the property by this Act is terminated;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination; and
- (e) all claims against the property created after the registration of the declaration and description, other than the encumbrances mentioned in clause *d*, are extinguished. R.S.O. 1970, c. 77, s. 18 (3).

Termination
by sale

45.—(1) Sale of the property or any part of the common elements may be authorized,

- (a) by a vote of owners who own 80 per cent of the units;
- (b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description; and
- (c) if the sale of part only of the common elements includes any portion of the common elements that are to be used by the owners of one or more designated units and not by all the owners, by the consent of the owners of the designated units affected.

(2) A deed or transfer shall be executed by the authorized officers of the corporation under its seal and a release or discharge shall be given by all persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 19 (1, 2), *amended*. Execution of conveyance

(3) Upon the registration of the instruments mentioned in subsection 2, Effect of registration of conveyance

(a) the government of the property or of the part of the common elements by this Act is terminated;

(b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered; and

(c) claims against the property or the part of the common elements created after the registration of the declaration and description are extinguished.

(4) Subject to subsection 5, the owners share the proceeds of the sale in the same proportions as their common interests. Proceeds

(5) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration under *The Arbitrations Act* by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration. Rights of dissenters
R.S.O. 1970, c. 25

(6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection 5, each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. R.S.O. 1970, c. 77, s. 19 (3-6). Where proceeds inadequate

(7) Subject to subsection 8, where any part of the common elements are expropriated under *The Expropriations Act*, the owners shall share the proceeds in the same proportions as their common interests. Expropriation
R.S.O. 1970, c. 154

Idem

R.S.O. 1970,
c. 154

(8) Any portion of the proceeds received on expropriation under *The Expropriations Act* that is attributable to any portion of the common elements that are to be used only by the owners of designated units and not by all the owners shall be divided among the owners of the designated units affected in the proportions in which their interests are affected. *New.*

Termination
by notice
without sale

46.—(1) Termination of the government of the property by this Act may be authorized,

- (a) by a vote of owners who own 80 per cent of the units; and
- (b) by the consent of the persons having registered claims against the property created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 20 (1), *amended.*

Registration
of notice

(2) Where termination of the government of the property by this Act is authorized under subsection 1, the corporation shall register a notice of termination in the prescribed form, executed by the authorized officers of the corporation under its seal and by all the persons having registered claims against the property created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 20 (4), *amended.*

Effect of
registration

(3) Upon registration of a notice of termination under subsection 2,

- (a) the government of the property by this Act is terminated;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description and have the

same priority as they had before the registration of the notice of termination; and

- (e) all other claims against the property created after the registration of the declaration and description are extinguished. R.S.O. 1970, c. 77, s. 20 (3).

47.—(1) A corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order terminating the government of the property by this Act. ^{Termination by S.C.O.}

(2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the court shall have regard to,

- (a) the scheme and intent of this Act;
- (b) the probability of unfairness to one or more owners if termination is not ordered; and
- (c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

(3) Where an order of termination is made under sub-section 2, the court may include in the order any provisions that the court considers appropriate in the circumstances. ^{Ancillary matters}
R.S.O. 1970, c. 77, s. 21.

48. When the owners and the property cease to be governed by this Act, ^{Termination}

- (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;
- (b) the remainder of the assets of the corporation shall be distributed among the owners in the same proportions as the proportions of their common interests. R.S.O. 1970, c. 77, s. 9 (19), *amended*.

VOTING BY MORTGAGEES

49. Where a mortgage of a unit and common interest contains a provision that authorizes the mortgagee to exercise ^{Rights of mortgagees}

the right of the owner to vote or to consent, the mortgagee may exercise the right, and, where two or more such mortgages contain such a provision, the right may be exercised by the mortgagee who has priority. R.S.O. 1970, c. 77, s. 22, *amended*.

PERFORMANCE OF DUTIES

Application
for order
to require
performance
of duties

50.—(1) Where a duty imposed by this Act, the declaration or the by-laws is not performed, the corporation, any owner, the bureau, or any person having an encumbrance against a unit and common interest, may apply to the county or district court for an order directing the performance of the duty. R.S.O. 1970, c. 77, s. 23 (1); 1974, c. 133, s. 13.(1).

Idem

(2) The court may by order direct performance of the duty and may include in the order any provisions that the court considers appropriate in the circumstances. R.S.O. 1970, c. 77, s. 23 (2).

Tenant to
pay common
expense
default in
lieu of rent

(3) Where an owner who has leased his unit defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection 1 of section 33 and subsection 7 of section 42, the corporation may by written notice to the lessee require the lessee to pay to the corporation, and upon receipt of such notice the lessee shall pay, out of the rent due under the lease, an amount equal to the default and such payment shall constitute payment toward rent under the lease and the lessee shall not by reason only of such payment to the corporation be in default of his obligation under the lease. *New*.

Application
to lessees

(4) The lessee of a unit is subject to the duties imposed by this Act, the declaration and the by-laws, on an owner, except those duties respecting common expenses, and this section applies in the same manner as to an owner and, where the lessee is in contravention of an order under this section or where he fails to pay, pursuant to a notice given under subsection 3, the court may terminate the lease. 1974, c. 133, s. 13 (2), *amended*.

Saving

(5) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. R.S.O. 1970, c. 77, s. 23 (3).

APPLICATION OF THE PLANNING ACT

51.—(1) Section 29 and clause *b* of subsection 1 of section 32 of *The Planning Act* do not apply in respect of dealings with whole units and common interests. 1972, c. 7, s. 1, *part, amended*. Application of subdivision control

(2) Subject to subsection 3, the provisions of section 33 of *The Planning Act* that apply to plans of subdivision apply, with necessary modifications, to descriptions under this Act, and a description shall not be registered unless approved or exempted by the Minister of Housing. 1972, c. 7, s. 1, *part*; 1973, c. 121, s. 1, *amended*. Approval of descriptions under R.S.O. 1970, c. 349, s. 33

(3) Before making an application under subsection 1 of section 33 of *The Planning Act*, the owner of a property or someone authorized by him in writing may apply to the Minister of Housing to have the description or any part of the description exempted from such section 33, or from any provisions thereof, and where in the opinion of the Minister such exemption is appropriate in the circumstances, he may grant the exemption. Exemption

(4) Section 34 of *The Planning Act* does not apply in respect of descriptions made for the purposes of this Act. 1972, c. 7, s. 1, *part*. R.S.O. 1970, c. 349, s. 34, not to apply

SALE AND LEASE OF UNITS

52.—(1) Every agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall be deemed to contain, Implied covenants in agreement of purchase and sale

(a) a covenant by the vendor to take all reasonable steps to register a declaration and description in respect of the property in which the unit is included without delay;

(b) a covenant by the vendor to take all reasonable steps to sell the other residential units included in the property without delay other than any units mentioned in a statement under clause *c* of subsection 1 of section 55;

(c) a covenant by the vendor to take all reasonable steps to deliver to the purchaser a registrable deed or transfer of the unit without delay; and

(d) a provision that the vendor will not collect from the purchaser any money on behalf of the corporation. 1974, c. 133, s. 14, *part*.

Failure to
register
declaration
within a
specified
period

(2) Notwithstanding any provision to the contrary contained therein, an agreement of purchase and sale of a proposed unit for residential purposes shall not be terminated by the proposed declarant only by reason of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing.

Application
to court

(3) Notwithstanding subsection 2, the proposed declarant may apply to a judge of a county or district court and the judge may by order terminate the agreement if he is satisfied that,

(a) the proposed declarant has taken all reasonable steps to register a declaration and description;

(b) a declaration and description cannot be registered within a reasonable period of time; and

(c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

Subsequent
registration
under Act

(4) The judge may, in an order under subsection 3, provide that a declaration and description shall not be registered in respect of the property in which the proposed unit is included during such period as he specifies in the order.

Registration
of order

(5) An order under subsection 3 is ineffective until a certified copy thereof is registered.

Payment
of purchase
price

(6) Where an agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes permits or requires the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the money paid in respect of such right or obligation to the proposed declarant shall be credited as payment of the purchase price unless the agreement states that the money or any part of it will not be so credited. 1974, c. 133, s. 14, *part*.

(7) Where a purchaser takes possession of a proposed unit for residential purposes under an agreement that permits the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, notwithstanding the provisions of *The Landlord and Tenant Act*, the proposed declarant,

Rights and
duties of
proposed
declarant

R.S.O. 1970,
c. 236

- (a) shall provide those services and only those services that the proposed corporation will have a duty to provide to owners;
- (b) shall repair and maintain the property and the proposed unit in the same manner as the proposed corporation will have a duty to repair and maintain;
- (c) has the same right of entry that the proposed corporation will have; and
- (d) may withhold consent to an assignment of the occupancy agreement. *New.*

53.—(1) An agreement of purchase and sale entered into by a declarant or proposed declarant of a unit or proposed unit for residential purposes is not binding on the purchaser unless the declarant or proposed declarant has previously delivered to the purchaser a copy of the current disclosure statement and all material amendments thereto. 1974, c. 133, s. 14, *part, amended.*

Disclosure
before sale

(2) The purchaser, before receiving delivery of a deed to or transfer of the unit, may rescind the agreement of purchase and sale within ten days after receiving the disclosure statement or, where there has been a material amendment thereto, within ten days after receiving the material amendment.

Rescission of
agreement

(3) A person may rescind an agreement of purchase and sale under subsection 2 by giving written notice of the rescission to the declarant or proposed declarant or to the solicitor of the declarant or proposed declarant.

Notice of
rescission

(4) Every declarant or proposed declarant who receives notice of rescission under subsection 3 from a person entitled to rescind the agreement of purchase and sale under subsection 2, shall forthwith refund, without interest, penalty or charge, to the person giving notice, all money that he received from that person under the agreement.

On rescission,
money to be
refunded

(5) Where any statement or material required under this Act to be provided by a declarant or proposed declarant to a

Where
statement
false or
misleading

purchaser of a unit or proposed unit for residential purposes contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information, the corporation and any unit owner who relied on such statement or material is entitled, as against the declarant or the proposed declarant to any remedy that is available at law or equity, including damages.

Disclosure
statement

(6) The disclosure statement referred to in subsection 1 shall contain and fully and accurately disclose,

- (a) the name and municipal address of the declarant or proposed declarant and of the property or proposed property;
- (b) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with any conditions that apply to the provision of amenities;
- (c) the portion of units or proposed units which the declarant or proposed declarant intends to market in blocks of units to investors;
- (d) a brief narrative description of the significant features of the existing or proposed declaration, by-laws and rules governing the use of common elements and units, and of any contracts or leases that may be subject to termination or expiration under section 40;
- (e) a current budget statement as of a specified date; and
- (f) where construction of amenities is not completed, a schedule of the proposed commencement and completion dates.

Budget
statements

(7) The budget statement mentioned in clause *e* of subsection 6 shall set out,

- (a) the common expenses;
- (b) the proposed amount of each expense;
- (c) particulars of the type, frequency and level of the services to be provided;

- (d) the projected monthly common expense contribution for each type of unit;
- (e) a statement of the portion of the common expense to be paid into a reserve fund;
- (f) a statement of the assumed inflation factor;
- (g) a statement of any judgments against the corporation, the status of any pending lawsuits to which the corporation is a party and the status of any pending lawsuits material to the property of which the declarant or proposed declarant has actual knowledge;
- (h) any current or expected fees or charges to be paid by unit owners or any of them for the use of the common elements or part thereof and other facilities related to the property;
- (i) any services not included in the budget that the declarant or proposed declarant provides, or expenses that he pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
- (j) the amounts in all reserve funds and the proportion of common expenses being paid into the reserve fund; and
- (k) all unusual and material circumstances, features and characteristics of the units and common elements comprising the property. *New.*

(8) Where the total amount incurred for the common expenses provided for in the budget statement exceeds the total of the proposed amounts set out in the statement, the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 40. 1974, c. 133, s. 14, *part, amended.*

Inaccurate
statement
of common
expenses

54.—(1) All money received by or on behalf of a proposed declarant from a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit for residential purposes before the registration of the declaration and description, other than money paid as rent or as an

Trust
money

occupancy charge, shall, notwithstanding the registration of the declaration and description thereafter, be held in trust by the person receiving such money for the person entitled thereto in respect of the agreement and such money shall be held in a separate account designated as a trust account at a chartered bank or trust company or a loan company or credit union authorized by law to receive money on deposit or a Province of Ontario Savings Office until,

- (a) its disposition to the person entitled thereto; or
- (b) delivery of prescribed security to the purchaser for repayment. 1974, c. 133, s. 15, *part, amended*.

Interest

(2) Where an agreement of purchase and sale referred to in subsection 1 is terminated and the purchaser is entitled to the return of any money paid under the agreement, the proposed declarant shall pay to the purchaser interest on such money at the prescribed rate.

Idem

(3) Subject to subsection 2, where a purchaser of a proposed unit under an agreement of purchase and sale referred to in subsection 1 enters into possession or occupation of the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the proposed declarant shall pay interest at the prescribed rate on all money received by him on account of the purchase price from the day the purchaser enters into possession or occupation until the day a deed or transfer acceptable for registration is delivered to him.

Idem

(4) Subject to subsections 2 and 3, the proposed declarant is entitled to any interest earned on the money required to be held in trust under subsection 1. 1974, c. 133, s. 15, *part*.

Leases of
units

55.—(1) A declarant or proposed declarant shall not grant a lease of a unit or proposed unit for residential purposes unless,

- (a) the lessee has entered into a *bona fide* agreement to purchase the unit;
- (b) the lease grants to the lessee a *bona fide* option to purchase the unit;
- (c) every agreement of purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or

- (d) written notice of the lessor's intention to lease the unit has been given to every purchaser under an agreement of purchase and sale, registered owner and mortgagee entitled to vote, and the period referred to in subsection 2 has expired or, where an application is made under subsection 2, it is finally disposed of. 1974, c. 133, s. 16, *part, amended*.

(2) Any person notified under clause *d* of subsection 1 may, within twenty-one days after receiving the notice, and on written notice to the declarant, apply to a judge of a county or district court, and the judge, if he is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant other relief as he considers proper. Application to court

(3) The notice mentioned in clause *d* of subsection 1 shall specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee. Contents of notice

(4) A declarant or proposed declarant may grant leases of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, provided that subsection 1 is complied with in respect of each lease. Terms of lease

(5) This section does not apply to the renewal of a lease of a unit or proposed unit where the lease was entered into before any agreement of purchase and sale of any unit or proposed unit included in the property is entered into. Exemption

(6) In this section, "lease" includes a licence to use or occupy and any agreement in the nature of a lease. 1974, c. 133, s. 16, *part, amended*. Lease defined

56. Every person who knowingly contravenes section 31, subsection 1 or 4 of section 41, subsection 1 of section 54, subsection 9 of section 57 or subsection 1 of section 60, or knowingly purports to enter into a lease in contravention of subsection 1 of section 55 is guilty of an offence and on summary conviction is liable to a fine of, Offences

(a) not more than \$25,000, where the person is a corporation; or

(b) not more than \$2,000, where the person is other than a corporation. 1974, c. 133, s. 16.

BUREAU

Designating
bureau

57.—(1) The Lieutenant Governor in Council shall designate a non-profit corporation incorporated without share capital under *The Corporations Act* to be the bureau for the purposes of this Act.

R.S.O. 1970,
c. 89

Idem

(2) No corporation shall be designated under subsection 1 whose by-laws do not provide for representation of owners of condominium units on the board of directors.

Objects

(3) Upon its designation, the objects of the corporation are extended to include,

(a) advising and assisting the public in condominium matters;

(b) assisting in the resolution of disputes between condominium corporations and unit owners and between two or more unit owners and for this purpose appointing review officers and paying their remuneration;

(c) disseminating information for the purpose of educating and advising condominium corporations and unit owners concerning condominium matters and the financial, operating and management practices of condominium corporations; and

(d) assisting in the formulation and conduct of educational courses for property management.

Moneys

(4) The moneys required for the purpose of defraying the organization and operating expenses of the bureau shall, until the 31st day of March, 1979, be paid out of the Consolidated Revenue Fund.

Review
officers
appointed

(5) The bureau shall appoint review officers who shall perform the duties and exercise the powers given to them by this Act and the regulations under the supervision of the bureau and shall perform such other duties as are assigned to them by the bureau.

Revenues and
expenses

(6) All moneys payable under this Act to the bureau shall be retained by the bureau and applied to defray the expenses incurred and expenditures made in the carrying out of its duties under this Act and otherwise for the purposes of its objects set out in subsection 3.

(7) The bureau shall make a report annually to the Minister of Consumer and Commercial Relations upon the affairs of the bureau, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Annual
reports

(8) Each corporation shall pay to the bureau an annual fee in the amount prescribed by regulation for each unit comprising the property and shall file such information and material as is prescribed by the regulations.

Fee to
bureau

(9) Every declarant shall file with the bureau the material set out in clause *f* of subsection 3 of section 27 prior to the meeting required under subsection 1 of section 27.

Filing
plans

(10) The bureau is not a Crown agency within the meaning of *The Crown Agency Act*. *New.*

Bureau
not Crown
agency
R.S.O. 1970,
c. 100

58.—(1) Where there is a dispute between a corporation and an owner or between two or more owners in respect of any matter relating to this Act, the declaration, by-laws or rules, any party to the dispute may, prior to the commencement of any court proceeding in respect of the same matter, refer the matter in dispute to the bureau for resolution and shall notify all other parties affected.

Dispute

(2) Within fourteen clear days after the matter has been referred to the bureau, the bureau shall give written notice to all parties of the date, time and place for the consideration of the matter in dispute and shall designate a person as review officer to review the matter in dispute.

Review by
officer

(3) For purposes of a review under subsection 2, the review officer may inquire into any matter relevant to the subject-matter of the dispute, whether or not previously brought to his attention by the parties.

Subject-
matter of
review

(4) Upon completing the review and subject to subsection 5, the review officer may make an order ordering any party to the review to do or refrain from doing any act that is the subject-matter of the review.

Order

(5) Where the review officer proposes to make an order under subsection 4, he shall serve notice of his proposal together with written reasons therefor on all parties to the review.

Notice

- Idem (6) A notice under subsection 5 shall state that every party to the review is entitled to appeal the proposed order to the Commercial Registration Appeal Tribunal and shall specify the place where the appeal may be filed.
- Order may be made after notice (7) Where there is no appeal to the Commercial Registration Appeal Tribunal, the review officer may make his order upon the expiration of twenty-one days after the last service of notice under subsection 5 on a party to the review.
- Order filed (8) On the request of any party to the review proceedings, the review officer shall file a copy of any order made by him under subsection 4 in the office of the Registrar of the Supreme Court under section 19 of *The Statutory Powers Procedure Act, 1971*, that applies thereto.
1971. c. 47 does not apply (9) Except as provided in subsection 8, *The Statutory Powers Procedure Act, 1971* does not apply to proceedings before the review officer designated by the bureau.
- Appeal (10) Every party to a review proceedings may appeal a review officer's proposal by filing a notice of appeal with the Commercial Registration Appeal Tribunal within twenty-one days after being served with notice of the review officer's proposal.
- Idem (11) On an appeal, the Commercial Registration Appeal Tribunal shall proceed by way of a hearing *de novo* and after the hearing, the Tribunal may make any order it considers just and equitable and for such purposes the Tribunal shall substitute its opinion for that of the review officer. *New.*

REGULATIONS

- Regulations **59.**—(1) The Lieutenant Governor in Council may make regulations,
- (a) classifying properties for the purposes of the regulations;
 - (b) prescribing the duties of officers appointed under *The Land Titles Act* or *The Registry Act* for the purpose of this Act;
 - (c) governing the method of describing in instruments of a property or any part of a property;
- R.S.O. 1970, cc. 234, 409

- (d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;
- (e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 4, surveys of the properties showing the units and common elements;
- (f) respecting the registration and recording of declarations, descriptions, by-laws, notices of termination and other instruments;
- (g) respecting the names of corporations;
- (h) respecting additions to the common elements;
- (i) requiring the payment of fees to officers appointed under *The Land Titles Act* or *The Registry Act*, and prescribing the amounts thereof;
- (j) prescribing forms and providing for their use;
- (k) governing funds intended for the payment of common expenses;
- (l) requiring and governing the books, accounts and records that shall be kept by condominium corporations and requiring and governing the accounting to members of condominium corporations in such manner and at such times as are prescribed;
- (m) exempting any class of person from this Act or the regulations or any provisions thereof;
- (n) prescribing security for the purposes of clause *b* of subsection 1 of section 54;
- (o) prescribing rates of interest that shall be paid on moneys required to be held in trust under this Act;
- (p) designating liens or claims for the purposes of clause *d* of subsection 2 of section 34;
- (q) prescribing statements and information required for purposes of subsection 8 of section 33;
- (r) regulating and governing the duties and powers of review officers appointed under subsection 5 of section 57;

- (s) prescribing the amounts of fees that are payable or chargeable under this Act;
- (t) prescribing information to be filed by corporations with the bureau;
- (u) prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations. R.S.O. 1970, c. 77, s. 25 (1); 1974, c. 133, s. 17, *amended*.

Application
of regulations

(2) Any provision of any regulation may be made to apply to all properties or to any class of properties. R.S.O. 1970, c. 77, s. 25 (2).

Offer to sell
land together
with lease
of dwelling
prohibited

60.—(1) No person shall offer to sell any interest in land together with a grant of exclusive occupancy or use for residential purposes of part of a building located on the land where that person will retain an interest in the land as tenant-in-common with the offeree unless he does so as a declarant or proposed declarant under this Act.

Exemption
from subs. 1

(2) The Lieutenant Governor in Council may make regulations exempting any person or group of persons from the provisions of subsection 1. *New*.

Act
supersedes
agreements

61. This Act applies notwithstanding any agreement to the contrary. *New*.

Repeals

62. The following are repealed:

1. *The Condominium Act*, being chapter 77 of the Revised Statutes of Ontario, 1970.
2. *The Condominium Amendment Act, 1972*, being chapter 7.
3. *The Condominium Amendment Act, 1973*, being chapter 121.
4. *The Condominium Amendment Act, 1974*, being chapter 133.
5. *The Condominium Amendment Act, 1977*, being chapter 67.

Commence-
ment

63. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

64. The short title of this Act is *The Condominium Act, 1978*.

An Act to revise
The Condominium Act

1st Reading

June 1st, 1978

2nd Reading

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

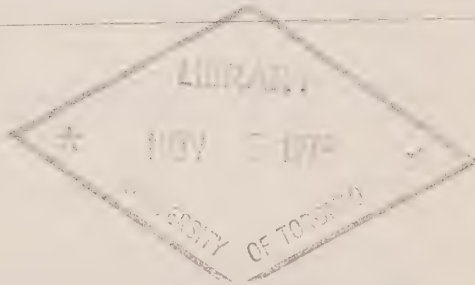
(Government Bill)

BILL 103

2ND SESSION, 31ST LEGISLATURE, ⁷ONTARIO
27 ELIZABETH II, 1978

An Act to revise The Condominium Act

THE HON. L. GROSSMAN
Minister of Consumer and Commercial Relations



(Reprinted as amended by the Administration of Justice Committee)

EXPLANATORY NOTE

The Bill is a revision of *The Condominium Act*.

The significant revisions are as follows:

1. Several matters that were not considered to be fundamental but were permitted to be included in the declaration are now to be dealt with by by-law. The declaration can be amended only with the consent of all owners and encumbrancers. The by-laws can be amended by varying percentage of owners depending on the nature and purpose of the by-law. Existing declarations will be able to be amended by by-law in respect of those matters which may now be dealt with by by-law.
2. The concept of a "special by-law" is being introduced and special by-law is defined.
3. The existence of a corporate seal is being made mandatory.
4. Provision is being made empowering the corporation to sue on behalf of individual owners and on its own behalf in respect of individual units. The corporation may also be sued as a representative of the owners in respect of certain matters.
5. There is elaboration in respect of the rules and proceedings governing the board of directors as well as the qualifications for a director. Some new provisions deal with age and financial qualifications for directors, the creation of an executive committee of directors and disclosure of interest by directors.
6. New provisions provide that a quorum for transaction of business by owners is $33\frac{1}{3}$ per cent of the owners and to pass by-laws, 50 per cent of the owners and that all voting by owners is on the basis of one vote per unit.
7. Provision is made for the corporation to maintain liability insurance to indemnify directors and officers who act in good faith with reasonable care.
8. The section dealing with fire and other peril insurance has been greatly expanded.
9. The appointment of auditors is made mandatory and provisions are made for the appointment and removal of auditors. The duties of the auditors are set out. There is also provision made to set up an audit committee of the directors.
10. A reserve fund is made mandatory. Rules are set out in respect of the use and maintenance of these funds.
11. Various agreements of a specified nature, made while the majority of the directors were elected when the declarant owned the majority of units, are deemed to expire in twelve months unless ratified by the directors at a time when the majority of directors were elected after the declarant ceased to be owner of the majority of units.
12. After substantial damage, instead of requiring a vote of owners to repair, the corporation is to be required to repair unless there is a vote to terminate the corporation.

13. Provision is made that where an owner is in default of payment to the corporation, the corporation may direct a lessee to pay to the corporation sufficient amounts out of rent payments to eliminate the default.
14. A ten day cooling-off period is provided for purchasers of new units.
15. Provision is made for a bureau whose function will be to assist condominium corporations and owners by providing advice, information and a forum for settling disputes.

In addition to the foregoing major changes, various other modifications and amendments are being made and there is some clarification of existing provisions.

BILL 103

1978

An Act to revise The Condominium Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “board” means the board of directors of a corporation;
- (b) “buildings” means the buildings included in a property;
- (c) “bureau” means the corporation designated under section 56;
- (d) “by-law” means a by-law of a corporation;
- (e) “claim” includes a right, title, interest, encumbrance, or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;
- (f) “common elements” means all the property except the units;
- (g) “common expenses” means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in this Act or in a declaration;
- (h) “common interest” means the interest in the common elements appurtenant to a unit;
- (i) “common surplus” means the excess of all receipts of the corporation, including the rents, profits and revenues on account of the common element, over the expenses;

- (j) "corporation" means a corporation created by this Act;
- (k) "declarant" means the owner or owners in fee simple of the land described in the description at the time of registration of a declaration and description of the land, and includes any successor or assignee of such owner or owners but does not include a *bona fide* purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;
- (l) "declaration" means the declaration specified in section 3, and includes any amendments;
- (m) "description" means the description specified in section 4;
- (n) "encumbrance" means a claim that secures the payment of money or the performance of any other obligation, and includes a charge under *The Land Titles Act*, a mortgage and a lien;
- (o) "mortgage" includes charge and "mortgagee" includes chargee;
- (p) "owner" means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;
- (q) "prescribed" means prescribed by the regulations;
- (r) "property" means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;
- (s) "proposed unit" means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a declaration and description have been registered in respect of the land;
- (t) "records" shall include those items enumerated in subsection 3 of section 26 and financial records prepared on behalf of the corporation, minutes of annual meetings and board meetings, as well as any amendments to the declaration, by-laws and rules;

(u) "registered" means registered under *The Land Titles Act* or *The Registry Act*; R.S.O. 1970,
cc. 234, 409

(v) "regulations" means the regulations made under this Act;

(w) "special by-law" means a by-law that is not effective until it is,

(i) passed by the board, and

(ii) confirmed, with or without variation, by a vote of owners who own not less than two-thirds of the units at a meeting duly called for that purpose;

(x) "surveyor" means an Ontario land surveyor registered under *The Surveyors Act*; R.S.O. 1970,
c. 452

(y) "unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and description are registered. R.S.O. 1970, c. 77, s. 1 (1); 1974, c. 133, s. 1, *amended*.

(2) For the purposes of this Act, the ownership of land includes the ownership of space. Ownership
of land R.S.O. 1970, c. 77, s. 1 (2).

DECLARATION AND DESCRIPTION

2.—(1) A property shall comprise only freehold land and interests, if any, appurtenant to that land. Freehold
land only

(2) A declaration and description may be registered by or on behalf of the owner in fee simple of the land described in the description. Who may
register

(3) Where the land and the interests appurtenant to the land described in the description are not entirely within one land titles or registry division or not entirely under *The Land Titles Act* or *The Registry Act*, the description shall not be registered. Land must
be in one
division

(4) Where the land described in a description is situate in a provisional judicial district or in a county, part of a county, city or separated town to which *The Land Titles Act* applies, the declaration and description must be registered under that Act. Where land
in land
titles area

Where land
not in land
titles area
R.S.O. 1970,
cc. 234, 59, 409

(5) Where the land described in a description is situate in a county, part of a county, city or separated town to which *The Land Titles Act* does not apply, a certificate of title under *The Certification of Titles Act* showing the owner by whom the declaration and description are being registered as the owner in fee simple of the land shall be registered under *The Registry Act* before the declaration and description are registered.

Effect of
registration

(6) Upon registration of a declaration and description, the land and the interests appurtenant to the land described in the description are governed by this Act. R.S.O. 1970, c. 77, s. 2.

What
declaration
must contain

3.—(1) A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description and unless it contains,

- (a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;
- (b) the consent, in the prescribed form, of every person having a registered mortgage against the land or interests appurtenant to the land described in the description;
- (c) a statement, expressed in percentages, of the proportions of the common interests;
- (d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;
- (e) an address for service and a mailing address for the corporation; and
- (f) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners. R.S.O. 1970, c. 77, s. 3 (1); 1974, c. 133, s. 2 (1), *amended*.

Where consent
not to be
withheld

(2) The consent mentioned in clause *b* of subsection 1 shall not be withheld by reason only of the failure of the proposed declarant to enter into a specified number of agreements of purchase and sale for the sale of proposed units. *New*.

(3) In addition to the matters mentioned in subsection 1, ^{What} and in any other section in this Act, a declaration may ^{declaration} contain. ^{may contain}

- (a) a specification of common expenses;
- (b) provisions respecting the occupation and use of the units and common elements;
- (c) provisions restricting gifts, leases and sales of the units and common interests;
- (d) a specification of duties of the corporation consistent with its objects; and
- (e) a specification of any allocation of the obligations to repair and to maintain the units and common elements. R.S.O. 1970, c. 77, s. 3 (2), *amended*.

(4) Subject to subsection 5, the declaration may be ^{Amendment} amended only with the consent of all owners and all persons ^{of} having registered mortgages against the units and common ^{declaration} interests. R.S.O. 1970, c. 77, s. 3 (3), *amended*.

(5) Where any provision in a declaration or by-law is ^{Inconsis-} inconsistent with the provisions of this Act, ^{tent} the provisions ^{provisions} of this Act shall prevail and the declaration or by-law is deemed to be amended accordingly. *New.*

(6) When a declaration is amended, the corporation shall ^{Registration} register a copy of the amendment executed by all the owners and all persons having registered mortgages against the units and common interests, and until the copy is registered the amendment is ineffective. R.S.O. 1970, c. 77, s. 3 (4).

(7) Notwithstanding subsections 4 and 6, the corporation ^{Change of} may by resolution of the board change its address for service ^{address for} and its mailing address ^{service} and the change does not take effect until a notice thereof in the prescribed form is registered.

(8) The corporation, on at least seven days notice to every ^{Amendment} owner and mortgagee, or an owner, on at least seven days ^{by judge} notice to the corporation and every other owner and mortgagee, may apply to a judge of the county or district court for an order amending the declaration or description and the judge, if he is satisfied that an amendment is necessary or desirable to correct an error or inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

Registration (9) An amendment to a declaration or description made by an order under subsection 8 is ineffective until a certified copy of the order is registered. 1974, c. 133, s. 2 (2), *amended*.

What
description
must contain

4.—(1) A description shall contain,

- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
- (b) structural plans of the buildings;
- (c) a specification of the boundaries of each unit by reference to the buildings;
- (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
- (e) a certificate of a surveyor that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
- (f) a description of any interests appurtenant to the land that are included in the property,

prepared in accordance with the regulations.

Approval of
description

(2) A description shall not be registered unless it has been approved in accordance with the regulations. R.S.O. 1970, c. 77, s. 4.

REGISTRATION

Index

5.—(1) Every land registrar in whose office a declaration and description are registered shall keep an index in the prescribed form to be known as the "Condominium Corporations Index".

Combined
offices

(2) Where a land titles office is combined with a registry office, one index under subsection 1 shall be kept for all declarations and descriptions registered in the combined offices.

Condominium
Register

(3) Every land registrar in whose office a declaration and description are registered shall keep a register in the prescribed form to be known as the "Condominium Register".

(4) Declarations, descriptions, by-laws, notices of termination, and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with this Act and the regulations, but, except as otherwise provided by this Act and the regulations, *The Land Titles Act* or *The Registry Act*, as the case may be, applies in respect of property governed by this Act. R.S.O. 1970, c. 77, s. 5; 1974, c. 133, s. 3.

This Act to govern registrations, etc.

R.S.O. 1970, c. 234, 409

UNITS AND COMMON ELEMENTS

6.—(1) Units and common interests are real property for all purposes.

Nature of units and common interests

(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of his unit.

Ownership of units

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

Dangerous activities

(4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. R.S.O. 1970, c. 77, s. 6.

Right to entry

7.—(1) The owners are tenants in common of the common elements.

Ownership of common elements

(2) An undivided interest in the common elements is appurtenant to each unit.

Common interests

(3) The proportions of the common interests are those expressed in the declaration.

Proportions

(4) Each owner may make reasonable use of the common elements subject to this Act, the declaration, the by-laws and the rules.

Use of common elements

(5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument that purports to separate the ownership of a unit from a common interest is void.

Ownership not to be separated

(6) Except as provided by this Act, the common elements shall not be partitioned or divided.

No division

Encum-
brances not
enforceable

(7) No encumbrance is enforceable against the common elements after the declaration and description are registered.

Saving

(8) Where, but for subsection 7, an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

Discharge

(9) Any unit and common interest may be discharged from such an encumbrance by payments to the claimant of a portion of the sum claimed, determined by the proportions specified in the declaration for sharing the common interests.

Idem

(10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations. R.S.O. 1970, c. 77, s. 7 (1-10).

Assessment

(11) For the purposes of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel except for those parts of the common elements that are leased for business purposes under section 9 upon which the lessee carries on an undertaking for gain that will constitute separate parcels for business assessment under *The Assessment Act*. R.S.O. 1970, c. 77, s. 7 (11), *amended*.

R.S.O. 1970,
c. 32

Where
corporation
deemed to
be occupier

(12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements. R.S.O. 1970, c. 77, s. 7 (12).

EASEMENTS

Easements
appurtenant
to units

8.—(1) The following easements are appurtenant to each unit:

1. Where a building or any part of a building,

(a) moves after registration of the declaration and description; or

(b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the by-laws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.

2. An easement for the provision of any service through any installation in the common elements or any other unit.
3. An easement for support by the common elements and any other unit capable of providing support.

(2) The following easements are appurtenant to the common elements: Easements appurtenant to common elements

1. An easement for the provision of any service through any installation in any unit.
2. An easement for support by any unit capable of providing support. R.S.O. 1970, c. 77, s. 8.

9.—(1) The corporation may, by special by-law,

Easements and leases of common elements

- (a) lease any part of the common elements, except any part that the declaration specifies is to be used by the owners of one or more designated units and not by all the owners; and
- (b) grant or transfer an easement or licence through the common elements.

(2) A lease or grant or transfer or an easement or licence mentioned in subsection 1, signed by the authorized officers of the corporation under its seal, affects the interest of every owner in the common elements as if the lease, grant or transfer had been executed by him, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant or transfer was authorized by a special by-law of the corporation. 1974, c. 133, s. 4, *amended*. Binding on all owners



CORPORATION

10.—(1) The registration of a declaration and description Creation creates a corporation without share capital whose members are the owners from time to time. R.S.O. 1970, c. 77, s. 9 (1).

Name of corporation	(2) The land registrar shall assign a name to each corporation or proposed corporation in accordance with the regulations. 1974, c. 133, s. 5 (1).
R.S.O. 1970, cc. 89, 280 1976, c. 66 not to apply	(3) <i>The Corporations Act, The Corporations Information Act, 1976</i> and the provisions respecting mortmain of <i>The Mortmain and Charitable Uses Act</i> do not apply to the corporation. R.S.O. 1970, c. 77, s. 9 (3).
Corporation seal	11. —(1) The corporation shall have a seal that shall be adopted and may be changed by resolution of the directors.
Idem	(2) The name of the corporation shall appear in legible characters on the seal. <i>New.</i>
Objects	12. —(1) The objects of the corporation are to manage the property and any assets of the corporation. R.S.O. 1970, c. 77, s. 9 (4).
Corporation duty	(2) The corporation has a duty to control, manage and administer the common elements and the assets of the condominium corporation. <i>New.</i>
Duty to effect compliance	(3) The corporation has a duty to effect compliance by the owners with this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 9 (12), <i>amended.</i>
Duties	(4) The declaration or the by-laws may specify duties of the corporation consistent with its objects, responsibilities and duties. R.S.O. 1970, c. 77, s. 9 (13), <i>amended.</i>
Right to performance of duties	(5) Each owner and each person having a <u>registered mortgage</u> against a unit and <u>common interest</u> has the right to the performance of any duty of the corporation specified by this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 9 (14), <i>amended.</i>
Real and personal property	13. —(1) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.
Interest in assets	(2) The owners share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the by-laws. R.S.O. 1970, c. 77, s. 9 (15, 16).
Action by corporation	14. —(1) The corporation after giving written notice to all <u>owners and mortgagees</u> may, on its own behalf and on behalf of any owner, sue for and recover damages and costs

in respect of any damage to common elements, the assets of the corporation or individual units, and the legal and court costs in any such actions brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected.

(2) The corporation after giving written notice to all owners and mortgagees ^{Idem} may sue on its own behalf and on behalf of any owner with respect to the common elements and any units, notwithstanding that the corporation was not a party to the contract in respect of which the action is brought, and the legal and court costs in an action brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected.

 (3) The notice referred to in subsections 1 and 2 is not ^{Idem} required to be given in respect of an action brought in the small claims court. *New.* 

(4) Any judgment for payment in favour of the corporation ^{Idem} in an action brought on its own behalf is an asset of the corporation. R.S.O. 1970, c. 77, s. 9 (18), *amended.*

(5) The corporation may, as representative of the owners of the units, be sued in respect of any matter relating to the common elements or assets of the corporation. ^{Corporation may be sued} *New.*

(6) Where an action is commenced after this Act comes into force, a judgment for the payment of money against the corporation is also a judgment against each owner at the time of judgment for a portion of the judgment determined by the proportions specified in the declaration for sharing the common interests. ^{Judgment against corporation}

(7) Where an action has been commenced before this Act ^{Idem} came into force, a judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses. R.S.O. 1970, c. 77, s. 9 (17), *amended.*

15.—(1) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such greater number as the by-laws may provide, elected by the owners. ^{Board of directors} R.S.O. 1970, c. 77, s. 9 (5), *amended.*

Change in number of directors	(2) A corporation may by by-law increase or, subject to subsection 1, decrease the number of the directors as set out in its by-laws.
Age of directors	(3) No person under eighteen years of age shall be a director of the corporation.
Qualifications	(4) No undischarged bankrupt or mentally incompetent person shall be a director and if a director becomes a bankrupt or a mentally incompetent person he thereupon ceases to be a director.
Consent	(5) A person who is elected or appointed a director is not a director unless, <ul style="list-style-type: none"> (a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as a director; <u>or</u> (b) when he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.
Idem	(6) For the purposes of subsection 5, a person who is elected or appointed as director and refuses under clause <i>a</i> of that subsection or fails to consent under clause <i>b</i> of that subsection shall be deemed not to have been elected or appointed as a director. <i>New.</i>
Term	(7) The term of the members of the board shall be three years or such lesser period as the by-laws may provide, but the directors may continue to act until their successors are elected, and directors are eligible for re-election. R.S.O. 1970, c. 77, s. 9 (6), <i>amended.</i>
Removal	(8) Any director may be removed before the expiration of his term by a vote of owners who together own a majority of the units and the owners may elect, in accordance with the by-laws dealing with the election of directors, any person qualified to be a member of the board for the remainder of the term of the director removed.
Vacancy	(9) If a vacancy in the membership of the board occurs, other than by way of removal under subsection 8 or as a result of the number of directors being increased, subject to subsection 11, the majority of the remaining members of the board may appoint any person qualified to be a member of the board to fill the vacancy <u>until the next annual meeting at which time the vacancy shall be filled by election by the owners.</u> 1974, c. 133, s. 5 (2), <i>amended.</i>

(10) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a meeting of the owners duly called for that purpose. Increase

(11) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a meeting of owners to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any owner. *New.* Election when no quorum

16.—(1) A quorum for the transaction of business is a majority of the members of the board or such greater number as the by-laws may provide. R.S.O. 1970, c. 77, s. 9 (8), *amended.* Quorum

(2) No business of a corporation shall be transacted by its board except at a meeting of directors at which a quorum of the board is present. Conduct of business

(3) Where there is a vacancy or vacancies in the board, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. Idem

(4) In addition to any other provision in the by-laws of a corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business, the general nature of which is specified in the notice calling the meeting. Calling meetings of directors

(5) In the absence of any other provision in that behalf in the by-laws of the corporation, at least ten days written notice of the time and place for the holding of the meeting shall be given to every director of the corporation, personally or by prepaid mail, addressed to him at his latest address as shown on the records of the corporation. *New.* Notice

17.—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the corporation, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent Disclosure by director of interest in contracts

to which such interest or information is within his knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum.

Interest
to be
material

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless the interest and the contract or transaction are both material.

When
declaration
of interest
to be made

(3) The declaration required in subsection 1 shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the corporation's business would not require approval by the directors or owners, at the first meeting of the directors held after the director becomes aware of it.

Effect of
declaration

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the director, if he was acting honestly and in good faith at the time the contract or transaction was entered into, is not by reason only of his holding the office of director accountable to the corporation or to its owners for any profit or gain realized from the contract or transaction, and the contract or transaction is not voidable by reason only of the director's interest therein.

Confirmation
by owners

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the corporation or to the owners for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of the owners duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

(6) For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the corporation is a sufficient declaration of interest in relation to any contract so made. *New.* General notice of interest

18.—(1) A corporation shall hold an annual meeting of the owners not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any owner or any mortgagee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation. Annual meetings

(2) The board, or any mortgagee holding mortgages on not less than 15 per cent of the units, may at any time call a meeting of the owners of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting. 1974, c. 133, s. 6, *part, amended.* Other meetings

(3) Unless otherwise provided in this Act, a quorum for the transaction of business at a meeting of owners is those owners present in person or represented by proxy owning $33\frac{1}{3}$ per cent of the units. *New.* Quorum

19.—(1) The board shall, upon receipt of a requisition in writing made by owners who together own at least 15 per cent of the units, call and hold a meeting of the owners and if the meeting is not called and held within thirty days of the receipt of the requisition, any of the requisitionists may call the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition. Requisition for owners' meeting

(2) The requisition shall state the nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the address for service of the corporation. 1974, c. 133, s. 6, *part, amended.* Requisition

20.—(1) At least ten days written notice of every meeting of the owners specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given to each owner or mortgagee entitled to vote, personally or by prepaid mail addressed to him at the address provided under subsection 2. Notice

(2) The corporation shall maintain a record upon which shall be entered each owner or mortgagee who notifies the corporation of his entitlement to vote and of his address for service, and the notice of a meeting required by subsection 1 Sufficient notice

shall be deemed to be sufficiently given if given in accordance with subsection 1 to those persons entered on the record twelve days before the date of the meeting. 1974, c. 133, s. 6, *part, amended.*

Right to
vote

(3) A mortgagee who receives a notice shall, in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and the owner of his intention to exercise such right at least two days before the date specified in the notice for the meeting. 1974, c. 133, s. 6, *part, amended.*

Records

21. The corporation shall keep adequate records, and any owner or his agent duly authorized in writing may inspect the records on reasonable notice and at any reasonable time. R.S.O. 1970, c. 77, s. 9 (11), *amended.*

Voting

22.—(1) All voting by owners shall be on the basis of one vote per unit and, where two or more persons entitled to vote in respect of one unit disagree on their vote, the vote in respect of that unit shall not be counted.

Idem

(2) On a show of hands or on a poll, votes may be given either personally or by proxy.

Proxy

(3) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting.

Idem

(4) A proxy need not be an owner.

Where not
entitled
to vote

(5) Except where, under this Act or the by-laws of the corporation, a unanimous vote of all the owners is required, an owner is not entitled to vote at any meeting if any contributions payable in respect of his unit are in arrears for more than thirty days prior to the meeting.

Majority
voting

(6) Unless otherwise provided in this Act, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast.

No vote
for parking
or storage
unit

(7) No owner is entitled to a vote in respect of a unit that is intended for parking or storage purposes. *New.*

Officers



23.—(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors and the same person may hold two or more offices.

(2) In the absence of other provisions in that behalf in the by-laws, the directors, Election and appointment

(a) shall elect the president from among themselves;

(b) shall appoint or elect the secretary; and

(c) may appoint or elect one or more vice-presidents or other officers. *New.*

 **24.**—(1) Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly and in good faith. *New.* Standards of care, etc., of directors 

(2) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in his election or qualifications. R.S.O. 1970, c. 77, s. 9 (9). Defects

25.—(1) Subject to subsection 2, the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against, Indemnification of directors

(a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

(b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation.

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant. Idem

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof except insurance against a liability, cost, charge or expense of the director or Insurance

officer incurred as a result of a contravention of subsection 1 of section 24. *New.*

Election
of new
board

26.—(1) The board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the owners to elect a new board, and such meeting shall be held within twenty-one days after the calling of the meeting.

Owner,
etc., may
call
meeting

(2) If the meeting referred to in subsection 1 is not called within the time provided for by that subsection, any owner or any mortgagee entitled to vote may call the meeting. 1974, c. 133, s. 6, *part, amended.*

Things to
be turned
over to
the board

(3) At the meeting required under subsection 1, the declarant shall give to the board elected at that meeting,

- (a) the seal of the corporation;
- (b) the minute book for the corporation, containing the most current copies of the declaration, by-laws, rules and regulations and any amendments thereto;
- (c) copies of all agreements entered into by the corporation or the declarant or his representatives on behalf of the corporation, including the management contracts, deeds, leases, licences and those items set out in subsection 6 of section 52;
- (d) a record maintained under subsection 2 of section 20;
- (e) the existing warranties and guarantees for all the equipment, fixtures and chattels included in the sale of either the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;
- (f) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- (g) the original specifications indicating thereon all material changes;
- (h) the plans for underground site service, site grading, drainage and landscaping together with cable television drawings if available;
- (i) such other available plans and information not mentioned in clause *f*, *g*, or *h* but relevant to future repair or maintenance of the property;

- (j) an unaudited financial statement prepared as at a date not earlier than thirty days prior to the meeting;
- (k) a table depicting the maintenance responsibilities and indicating whether the corporation or the unit owners are responsible;
- (l) bills of sale or transfers for all items that are assets of the condominium corporation but not part of the real property;
- (m) a list detailing the original costs and current replacement costs and life expectancy under normal maintenance conditions of all major capital items in the property, including, where applicable, those items set out in subsection 1 of section 36; and
- (n) all financial records of the corporation and of the declarant relating to the operation of the corporation from the date of registration of the declaration and the description.

(4) The declarant shall give to the board within sixty ^{Idem} days after the meeting required under subsection 1 an audited financial statement prepared as at the date of the meeting required under subsection 1. *New.*

27.—(1) The corporation shall obtain and maintain insurance on its own behalf and on behalf of the owners of the units and common elements, excluding improvements and betterments made or acquired by an owner, against major perils to the replacement cost thereof, and against such other perils as may be specified by the declaration or by-laws, and for this purpose the corporation shall be deemed to have an insurable interest in the units and common elements.

(2) Any payment by an insurer under a policy of insurance entered into under subsection 1 shall, notwithstanding the terms of the policy, be paid to the order of insurance trustees, if any, or otherwise shall be paid to or to the order of the corporation and, subject to subsection 2 of section 42, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may be effected lawfully.

(3) Insurance obtained and maintained by a corporation under subsection 1 shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to his unit or his interest in the common ele-

Corporation shall maintain insurance

Payment of insurance

Insurance under subs. 1 not other insurance

ments and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective.

Insurance
non-
contributory
R.S.O. 1970,
c. 224

(4) Notwithstanding section 124 of *The Insurance Act* or the provisions of the policy, a policy of insurance issued under subsection 1 and any other policy of insurance, except another policy issued under subsection 1, are not liable to be brought into contribution with each other.

Liability
insurance

(5) The corporation shall obtain and maintain insurance against its liability resulting from breach of duty as occupier of the common elements or arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles, in addition to such other insurance as may be specified in the declaration or by-laws.

Act of
person does
not breach
policy

(6) Notwithstanding the terms of a policy issued under subsection 1, no act of any person shall be deemed to be a breach of the conditions of the policy where such act is prejudicial to the interests of the corporation or the owners.

Provision
for notice

(7) A policy of insurance issued under subsection 1 shall be deemed to include provision for sixty days notice sent by registered mail to be given by the insurer to the corporation and to the insurance trustees, if any, in the event of termination of the insurance by the insurer.

Application
of section

(8) In the event that any provision of a policy issued under subsection 1 or any part of *The Insurance Act* is in conflict or inconsistent with this section or any part thereof, the provisions of this section shall apply.

Capacity to
maintain
insurance

(9) Nothing in this section shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of any insurable interest.

Insurance
money to be
used for
repairs
R.S.O. 1970,
c. 279

(10) Notwithstanding any provision in a mortgage and notwithstanding subsection 2 of section 6 of *The Mortgages Act*, a mortgagee shall not require that any money received on an insurance of the property or any part thereof be applied in or towards the discharge of the money due under his mortgage and any such requirement is void.

Interpre-
tation

(11) For the purposes of subsection 1, "major perils" means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious mischief. R.S.O. 1970, c. 77, s. 15, *amended*.

BY-LAWS AND RESOLUTIONS

28.—(1) The board may pass by-laws, not contrary to ^{By-laws} this Act or to the declaration,

- (a) to govern the number, qualification, nomination, election, term of office and remuneration of the directors;
- (b) to regulate the meeting, quorum and functions of the board;
- (c) to govern the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (d) to govern the management of the property;
- (e) to govern the maintenance of the units and common elements;
- (f) to govern the use and management of the assets of the corporation;
- (g) specifying duties of the corporation;
- (h) to govern the assessment and collection of contributions towards the common expenses;
- (i) authorizing the borrowing of money to carry out the objects and duties of the corporation; and
- (j) respecting the conduct generally of the affairs of the corporation.

(2) Subject to subsection 6, a by-law passed under sub-^{Confirmation} section 1 is not effective until it is confirmed, with or without variation, by two-thirds of the votes cast at a meeting of the owners duly called for that purpose.

(3) For purposes of subsection 2, a quorum for the meet-^{Quorum} ing is those owners present in person or represented by proxy owning 50 per cent of the units.

(4) A by-law relating to the remuneration of a director^{Remuneration of directors} or directors shall fix the remuneration and the period for which it is to be paid. *New.*

(5) The by-laws shall be reasonable and consistent with ^{By-laws must be reasonable} this Act and the declaration.

Registration (6) When a by-law or special by-law is made by the corporation, the corporation shall register a copy of the by-law or special by-law together with a certificate executed by the corporation that the by-law was made in accordance with this Act, the declaration and the by-laws, and until the copy and certificate are registered the by-law is ineffective. R.S.O. 1970, c. 77, s. 10 (2, 3).

RULES GOVERNING USE OF COMMON ELEMENTS

House rules **29.**—(1) The board may make rules respecting the use of common elements and units or any of them to promote the safety, security or welfare of the owners and of the property or for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of other units. R.S.O. 1970, c. 77, s. 11 (1); 1974, c. 133, s. 8, *amended*.

Idem (2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

Compliance and enforcement (3) The rules shall be complied with and enforced in the same manner as the by-laws. R.S.O. 1970, c. 77, s. 11 (2, 3).

When rules effective (4) Subject to subsection 5, any rule made under subsection 1 shall be effective thirty days after notice thereof has been given to each owner unless the board is in receipt of a requisition in writing made under section 19 requiring a meeting of owners to consider the rules.

Idem (5) If a meeting of owners is required, the rule made under subsection 1 shall become effective only upon approval at such meeting of owners.

Owners amending or repealing rules (6) The owners may at any time after a rule becomes effective amend or repeal a rule at a meeting of owners duly called for that purpose. *New*.

Entry by canvassers **30.** No corporation or servant or agent of a corporation shall restrict reasonable access to the property by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal government or school board for the purpose of canvassing or distributing election material. 1974, c. 133, s. 9.

OBLIGATION OF OWNERS AND OCCUPIERS

Obligations and Rights of owners, etc. **31.**—(1) Each owner is bound by and shall comply with this Act, the declaration, the by-laws and the rules.

(2) Each owner has a right to the compliance by the other owners with this Act, the declaration, the by-laws and the rules. Idem

(3) The corporation, and every person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 12, *amended*. Right of corporation and encumbrancers

(4) Each person in occupation of a proposed unit is bound by and shall comply with the rules proposed by the proposed declarant where those rules are reasonable and consistent with this Act. Obligations and rights of occupiers

(5) Each person in occupation of a proposed unit has a right to the compliance by every other occupant of a proposed unit with the rules proposed by the proposed declarant. Idem

(6) The proposed declarant has a duty, until registration of the declaration and description, to effect compliance by occupiers of proposed units with the rules proposed by the declarant. *New*. Duty of proposed declarant

32.—(1) The owners shall contribute towards the common expenses in the proportions specified in the declaration. R.S.O. 1970, c. 77, s. 13 (1). Duty of owners to contribute to common expenses

(2) Any common surplus in a corporation shall be applied either against future common expenses or paid into the reserve fund, but shall not, other than on termination, be distributed to the owners or mortgagees. *New*. Application of common surplus

(3) The obligation of an owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment. R.S.O. 1970, c. 77, s. 13 (3). No avoidance

(4) Where an owner defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection 1 of this section or subsection 7 of section 41, the corporation has a lien for the unpaid amount against his unit and its appurtenant common interest together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collections of the unpaid amount. 1974, c. 133, s. 10, *part*; 1977, c. 67, s. 1 (1), *amended*. Lien

(5) The lien mentioned in subsection 4 expires three months after the default that gave rise to the lien first occurred unless the corporation within that time registers a notice of lien in the prescribed form, and, where the notice is Expiration of lien

registered in accordance with subsection 5 of section 33, no further notice or registration is required in respect of default in payment occurring or continuing after registration. 1977, c. 67, s. 1 (2), *amended*.

Lien
enforcement

(6) The lien may be enforced in the same manner as a mortgage. R.S.O. 1970, c. 77, s. 13 (5).

Discharge

(7) Upon payment of the unpaid amount together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount and upon demand, the corporation shall give the owner a discharge in the prescribed form. 1977, c. 67, s. 1 (3).

Certificate
of lien

(8) Any person acquiring or proposing to acquire an interest in a unit from an owner may request the corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of default in payment thereof, if any, by the owner, together with such statements and information as are prescribed by the regulations, and the certificate binds the corporation as against the person requesting the certificate in respect of any default or otherwise shown in the certificate, as of the day it is given.

Idem

(9) The corporation shall give the certificate and the statements and information referred to in subsection 8 within seven days after its receipt of the request therefor and, where the corporation fails to give the certificate, statements and information within the time prescribed, the corporation shall be deemed, as against the person requesting the certificate, to have given a certificate stating no default. 1974, c. 133, s. 10, *part, amended*.

Fee

(10) The corporation may charge a fee for providing the certificate, statements and information referred to in subsection 8, in the amount prescribed by regulation. *New*.

Lien has
priority

33.—(1) Where a lien created by subsection 4 of section 32 is in respect of a unit for residential purposes, that lien has priority over every registered and unregistered encumbrance notwithstanding that such encumbrance existed prior to the lien arising.

Where subs. 1
does not
apply

(2) Subsection 1 does not apply,

(a) to a lien arising before the 1st day of January, 1978;

(b) in respect of a claim of the Crown other than by way of a mortgage;

(c) in respect of a claim for taxes, charges, rates or assessments levied or recoverable under *The Municipal Act, The Education Act, 1974, The Local Roads Boards Act, The Statute Labour Act or The Local Improvement Act*; or

R.S.O. 1970,
cc. 284, 256,
445, 255
1974, c. 109

(d) to such lien or claim that may be designated by regulation. 1977, c. 67, s. 2, *part, amended*.

(3) Every mortgage of a unit for residential purposes shall be deemed to contain a provision that,

Provisions
deemed in
mortgage

(a) the mortgagee has the right to collect the owner's contribution towards common expenses and shall forthwith pay any amount so collected to the corporation on behalf of the unit owner;

(b) the owner's default in the payment of common expenses shall constitute default under the mortgage; and

(c) the mortgagee shall have the right to pay the owner's contribution towards common expenses that shall from time to time fall due and be unpaid in respect of the mortgaged premises and that such payments together with all reasonable costs, charges and expenses incurred in respect thereto, shall be added to the debt thereby secured and shall be payable forthwith with interest at the rate payable on the mortgage, and, if after demand the owner fails to fully reimburse the mortgagee, the mortgage shall immediately become due and payable at the option of the mortgagee.

(4) A corporation shall, where so requested by the holder of a mortgage on a unit for residential purposes, provide, free of charge, to the person making the request a written statement setting out, in respect of the unit, the common expenses of the owner and all payments thereof in default.

Statement
to
mortgagee

(5) Where a lien arises in respect of a unit for residential purposes, the corporation shall, on or before the day a notice of lien is registered, give notice of the lien to every encumbrancer whose encumbrance is registered against the title of the unit, by personal service of the notice or by sending the notice by registered prepaid post addressed to the encumbrancer at his last known address.

Notice of
lien to be
given

(6) Where notice of lien is not given as provided in subsection 5, then subsection 1 ceases to apply three months after

Where notice
of lien
not given

the default that gave rise to the lien first occurred, provided that where notice is given after registration of notice of lien then the corporation may register another notice of lien, but subsection 1 shall continue to apply to any lien which arose not earlier than three months before the last registration of notice of lien. 1977, c. 67, s. 2, *part, amended*.

AUDITORS AND FINANCIAL STATEMENTS

Auditors

34.—(1) The owners at their first meeting after this Act comes into force shall appoint one or more auditors to hold office until the close of the next annual meeting and, if the owners fail to do so, the board shall forthwith make such appointment or appointments.

Idem

(2) The owners shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

Casual vacancy

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

Removal of auditor

(4) The owners may, by resolution passed by a majority of the votes cast at a meeting duly called for that purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term.

Notice to auditor

(5) Before calling a meeting for the purpose of removing an auditor, the corporation shall, fifteen days or more before the giving of the notice of the meeting, give to the auditor,

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to owners in connection with the meeting.

Right of auditor to make representations

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

- (a) his proposed removal as auditor;
- (b) the appointment or election of another person to fill the office of auditor; or

(c) his resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting, a copy of such representations to each person entitled to receive notice of the meeting.

(7) The remuneration of an auditor appointed by the owners shall be fixed by the owners, or by the board if it is authorized so to do by the owners, and the remuneration of an auditor appointed by the board shall be fixed by the board. Remuneration

(8) If for any reason no auditor is appointed, the court may, on the application of an owner, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services. Appointment by court

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made. Notice of appointment

(10) No person shall be appointed or act as auditor of a corporation who is a director, officer, employee or manager of the corporation, has an interest in contracts of the corporation, or is a partner, employer or employee of any director, officer, employee or manager of the corporation. Persons disqualified as auditors

(11) This section does not apply to a corporation where the property consists of less than twenty-five units for residential purposes. *New.* Where section does not apply

35.—(1) The auditor shall make such examination as will enable him to report to the owners as required by subsection 2. Annual audit

(2) The auditor shall make a report to the owners on the financial statement, to be laid before the corporation at any annual meeting during his term of office, and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. Auditor's report

(3) Where the report under subsection 2 does not contain the unqualified opinion required thereby, the auditor shall state in his report the reasons therefor. Idem

Facts
discovered
after
statement

(4) Where facts come to the attention of the board or officers of the corporation that if known prior to the date of the last annual meeting of owners would have required a material adjustment to the financial statement presented to the meeting, the board or officers shall communicate such facts to the auditor who reported to the owners under this section and the board shall forthwith amend the financial statement and send it to the auditor.

Amendment
of auditor's
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report with respect to the financial statement in accordance with subsection 2 and the board or, if it fails to do so within a reasonable time, the auditor shall mail or deliver such amended report to the owners.

Idem

(6) The financial statement shall contain a statement of changes in net assets or a statement of source and application of funds, and the auditor shall include in his report a statement whether, in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein.

Idem

(7) The auditor in his report shall make such statements as he considers necessary if,

- (a) the corporation's financial statement is not in agreement with its accounting records;
- (b) the corporation's financial statement is not in accordance with the requirements of this Act;
- (c) he has not received all the information and explanations that he has required; or
- (d) proper accounting records have not been kept, so far as appears from his examination.

Right of
access, etc.

(8) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanations as, in his opinion, are necessary to enable him to report as required by subsection 2.

Auditor
may attend
owners'
meetings

(9) The auditor of a corporation is entitled to attend any meeting of owners and to receive all notices and other communications related to any such meeting that an owner is entitled to receive and to be heard at any such meeting that

he attends on any part of the business of the meeting that concerns him as auditor.

(10) At any meeting of owners, the auditor, if present, shall answer inquiries directed to him concerning the basis upon which he formed the opinion stated in the report made under subsection 2.

Auditor must answer inquiries at owners' meetings

(11) The financial statement shall be approved by the board and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, and the auditor's report shall be attached to or accompany the financial statement.

Financial statement approved by board

(12) The corporation shall, ten days or more before the date of the annual meeting of owners, send by prepaid mail or deliver to each owner at his latest address as shown on the records of the corporation and shall file with the bureau a copy of the financial statement and a copy of the auditor's report.

Corporation to send copies of financial statements, etc., to owners

(13) The board shall lay before each annual meeting of owners,

Statements laid before owners at annual meeting

- (a) a financial statement made in accordance with generally accepted accounting principles;
- (b) the report of the auditor to the owners; and
- (c) such further information respecting the financial position of the corporation as the by-laws of the corporation require. *New.*

RESERVE FUND

36.—(1) In this Act and the regulations, the declaration, by-laws and financial statements prepared in accordance with this Act, the declaration or by-laws, "reserve fund" means a fund set up by the corporation in a special account for major repair and replacement of common elements and assets of the corporation including where applicable without limiting the generality of the foregoing, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators, laundry, recreational and parking facilities.

Reserve fund defined

(2) The corporation shall establish and maintain one or more reserve funds and shall collect from the owners, as part of their contribution towards common expenses, amounts that, calculated on the basis of expected repair and replacement costs and life expectancy of things comprising the common elements and the assets of the corporation,

Reserve fund established and maintained

are reasonably expected to provide sufficient funds for major repair and replacement of common elements and assets of the corporation, but in no event shall the contributions to the reserve fund or funds be less than 5 per cent of the amount required for contributions to the common expenses exclusive of the reserve fund.

Idem

(3) Three years after this Act comes into force, the contribution to the reserve fund or funds shall be not less than 10 per cent of the amount required for contributions to the common expenses exclusive of the reserve fund.

Idem

(4) Any fund set up for any of the purposes mentioned in subsection 1 shall be deemed to be a reserve fund notwithstanding that it may not be so designated.

Use of
reserve fund
limited

(5) No part of a reserve fund shall be used except for the purposes for which the fund was established.

Fund not
available for
distribution

(6) The amount of a reserve fund shall constitute an asset of the corporation and shall not be distributed to any owner except on termination of the corporation. *New.*

AUDIT COMMITTEE

Audit
committee
may be
established

37.—(1) Where the number of directors of a corporation is more than six, the directors may elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation, to hold office until the next annual meeting of the owners.

Auditor
shall submit
financial
statement

(2) The auditor shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board.

Auditor's
right to
appear

(3) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

Committee
convening
at request
of auditor

(4) Upon the request of the auditor, the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the board or members. *New.*

MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

Substantial
alterations

38.—(1) The corporation may by a vote of owners who own 80 per cent of the units make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation may by a vote of the

owners make any other addition, alteration or improvement to or renovation of the common elements or may make any other change in the assets of the corporation. R.S.O. 1970, c. 77, s. 14 (1), *amended*.

(2) A grant or transfer of an easement to the corporation is as effective as if the corporation owns land capable of being benefitted by the easement. 1974, c. 133, s. 11. Easement

(3) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any change in the assets of the corporation are common expenses. R.S.O. 1970, c. 77, s. 14 (2). Cost

(4) If any substantial addition, alteration or improvement to or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, made within ten days after the date of the vote referred to in subsection 1, purchase his unit and common interest. R.S.O. 1970, c. 77, s. 14 (3), *amended*. Dissenters

(5) Where the corporation and the owner who dissented do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration under *The Arbitrations Act* by serving a notice to that effect on the corporation. R.S.O. 1970, c. 77, s. 14 (4). Arbitration
R.S.O. 1970,
c. 25

AGREEMENTS

39.—(1) The corporation may, by by-law, terminate, on giving sixty days notice in writing, any agreement between the corporation and any person for the management of the property entered into at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units. 1974, c. 133, s. 12, *part, amended*. Management
agreement

(2) Every agreement for the provision of services on a continuing basis, every lease of the common elements or part thereof for business purposes and every agreement for the provision of recreation facilities to the corporation on other than a non-profit basis entered into by a corporation after this Act comes into force and at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units that does not expire within twelve months after its effective date shall be deemed to expire twelve months after its effective date unless, within the twelve month period, the agreement is ratified by the board at a time when the majority of the board members were elected after the declarant ceased to be the registered owner of a majority of the units. *New*. Agreements
expiring

INVESTIGATION OF RECORDS

Examination
of records

40.—(1) Every person in receipt of money paid to or for the benefit of the corporation shall, upon reasonable notice and during normal business hours, make available for examination by the corporation or any owner or mortgagee, all records relating to the receipt and disposition of such money.

Application
to court

(2) Upon application to a judge of a county or district court by the corporation or any owner, or mortgagee, the judge, if satisfied that the application is made in good faith and that it is *prima facie* in the best interests of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as he considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection 1 and to make such audit of the accounts and records of such person as the judge considers necessary.

Power of
inspector
1971, c. 49

(3) An inspector appointed under subsection 2 has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such investigation or audit as if it were an inquiry under that Act.

Trust
money

(4) All money referred to in subsection 1 shall be held by the person in receipt thereof in trust for the performance of the duties and obligations in respect of which the money is paid, and he shall pay such money into a separate account at a chartered bank or trust company or a loan company or credit union authorized by law to receive money on deposit or a Province of Ontario Savings Office and shall designate the account as a trust account in the name of the corporation. 1974, c. 133, s. 12, *part, amended*.

REPAIRS AND MAINTENANCE

Interpre-
tation

41.—(1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after registration of the declaration and description.

Duty to
repair

(2) Subject to section 42, the corporation shall repair the units and common elements after damage.

Maintenance
of common
elements

(3) The corporation shall maintain the common elements.

Maintenance
of units

(4) Each owner shall maintain his unit. R.S.O. 1970, c. 77, s. 16 (1-4).

(5) Notwithstanding subsections 2, 3 and 4, the declaration may provide that, Declaration may provide otherwise

- (a) each owner shall, subject to section 42, repair his unit after damage;
- (b) the owners shall maintain the common elements or any part of the common elements;
- (c) the corporation shall maintain the units; or
- (d) each owner shall maintain and repair after damage those parts of the common elements of which he has the exclusive use. R.S.O. 1970, c. 77, s. 16 (5), *amended*.

(6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time. R.S.O. 1970, c. 77, s. 16 (6). Where corporation to make repairs for owners

(7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section and the cost of such repairs shall be added to the owner's contribution toward common expenses. R.S.O. 1970, c. 77, s. 16 (7), *amended*. Consent

(8) All warranties given with respect to workmanship and materials furnished to the property shall enure to the benefit of all unit owners from time to time and to the corporation. *New*. Warranties

WHERE DAMAGE OCCURS

42.—(1) Where damage to the building occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to 25 per cent of the buildings. Determination of damage

(2) Where there has been a determination that there has been substantial damage to 25 per cent of the buildings, the corporation shall repair within a reasonable time, unless, within sixty days after the determination made under subsection 1, by a vote of owners who own 80 per cent of the units, the owners vote for termination. R.S.O. 1970, c. 77, s. 17, *amended*. Repair of damage

TERMINATION

43.—(1) Where, under subsection 2 of section 42, the owners vote for termination, the corporation shall, within Notice of termination

ten days of the vote, register a notice of termination in the prescribed form. R.S.O. 1970, c. 77, s. 18 (1), *amended*.

Effect of
registration
of notice

(2) Upon the registration of a notice of termination under subsection 1,

- (a) the government of the property by this Act is terminated;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination; and
- (e) all claims against the property created after the registration of the declaration and description, other than the encumbrances mentioned in clause *d*, are extinguished. R.S.O. 1970, c. 77, s. 18 (3).

Termination
by sale

44.—(1) Sale of the property or any part of the common elements may be authorized,

- (a) by a vote of owners who own 80 per cent of the units;
- (b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description; and
- (c) if the sale of part only of the common elements includes any portion of the common elements that are to be used by the owners of one or more designated units and not by all the owners, by the consent of the owners of the designated units affected.

(2) A deed or transfer shall be executed by the authorized officers of the corporation under its seal and a release or discharge shall be given by all persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 19 (1, 2), *amended*. Execution of conveyance

(3) Upon the registration of the instruments mentioned in subsection 2, Effect of registration of conveyance

(a) the government of the property or of the part of the common elements by this Act is terminated;

(b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered; and

(c) claims against the property or the part of the common elements created after the registration of the declaration and description are extinguished.

(4) Subject to subsection 5, the owners share the proceeds of the sale in the same proportions as their common interests. Proceeds

(5) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration under *The Arbitrations Act* by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration. Rights of dissenters

(6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection 5, each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. R.S.O. 1970, c. 77, s. 19 (3-6). Where proceeds inadequate

(7) Subject to subsection 8, where any part of the common elements are expropriated under *The Expropriations Act*, the owners shall share the proceeds in the same proportions as their common interests. Expropriation

Idem

R.S.O. 1970,
c. 154

(8) Any portion of the proceeds received on expropriation under *The Expropriations Act* that is attributable to any portion of the common elements that are to be used only by the owners of designated units and not by all the owners shall be divided among the owners of the designated units affected in the proportions in which their interests are affected. *New.*

Termination
by notice
without sale

45.—(1) Termination of the government of the property by this Act may be authorized,

- (a) by a vote of owners who own 80 per cent of the units; and
- (b) by the consent of the persons having registered claims against the property created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 20 (1), *amended.*

Registration
of notice

(2) Where termination of the government of the property by this Act is authorized under subsection 1, the corporation shall register a notice of termination in the prescribed form, executed by the authorized officers of the corporation under its seal and by all the persons having registered claims against the property created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 20 (4), *amended.*

Effect of
registration

(3) Upon registration of a notice of termination under subsection 2,

- (a) the government of the property by this Act is terminated;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description and have the

same priority as they had before the registration of the notice of termination; and

- (e) all other claims against the property created after the registration of the declaration and description are extinguished. R.S.O. 1970, c. 77, s. 20 (3).

46.—(1) A corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order terminating the government of the property by this Act. ^{Termination by S.C.O.}

(2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the court shall have regard to,

- (a) the scheme and intent of this Act;
- (b) the probability of unfairness to one or more owners if termination is not ordered; and
- (c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

(3) Where an order of termination is made under sub-section 2, the court may include in the order any provisions that the court considers appropriate in the circumstances. ^{Ancillary matters}
R.S.O. 1970, c. 77, s. 21.

47. When the owners and the property cease to be governed by this Act, ^{Termination}

- (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;
- (b) the remainder of the assets of the corporation shall be distributed among the owners in the same proportions as the proportions of their common interests. R.S.O. 1970, c. 77, s. 9 (19), *amended*.

VOTING BY MORTGAGEES

48. Where a mortgage of a unit and common interest contains a provision that authorizes the mortgagee to exercise ^{Rights of mortgagees}

the right of the owner to vote or to consent, the mortgagee may exercise the right, and, where two or more such mortgages contain such a provision, the right may be exercised by the mortgagee who has priority. R.S.O. 1970, c. 77, s. 22, *amended*.

PERFORMANCE OF DUTIES

Application
for order
to require
performance
of duties

49.—(1) Where a duty imposed by this Act, the declaration, the by-laws or the rules is not performed, the corporation, any owner, the bureau, or any person having a registered mortgage against a unit and common interest, may apply to the county or district court for an order directing the performance of the duty. R.S.O. 1970, c. 77, s. 23 (1); 1974, c. 133, s. 13 (1), *amended*.

Idem

(2) The court may by order direct performance of the duty and may include in the order any provisions that the court considers appropriate in the circumstances. R.S.O. 1970, c. 77, s. 23 (2).

Tenant to
pay common
expense
default in
lieu of rent

(3) Where an owner who has leased his unit defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection 1 of section 32 and subsection 7 of section 41, the corporation may by written notice to the lessee require the lessee to pay to the corporation, and upon receipt of such notice the lessee shall pay, out of the rent due under the lease, an amount equal to the default and such payment shall constitute payment toward rent under the lease and the lessee shall not by reason only of such payment to the corporation be in default of his obligation under the lease. *New*.

Application
to lessees

(4) The lessee of a unit is subject to the duties imposed by this Act, the declaration, the by-laws and the rules on an owner, except those duties respecting common expenses, and this section applies in the same manner as to an owner and, where the lessee is in contravention of an order under this section or where he fails to pay, pursuant to a notice given under subsection 3, the court may terminate the lease. 1974, c. 133, s. 13 (2), *amended*.

Saving

(5) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. R.S.O. 1970, c. 77, s. 23 (3).

Notification
of unit lease

(6) Where the owner of a unit leases his unit, the owner shall notify the corporation that the unit is leased and shall provide to the corporation the lessee's name and the owner's address. *New*.

APPLICATION OF THE PLANNING ACT

50.—(1) Section 29 and clause *b* of subsection 1 of section 32 of *The Planning Act* do not apply in respect of dealings with whole units and common interests. 1972, c. 7, s. 1, *part, amended*. Application of subdivision control

(2) Subject to subsection 3, the provisions of section 33 of *The Planning Act* that apply to plans of subdivision apply, with necessary modifications, to descriptions under this Act, and a description shall not be registered unless approved or exempted by the Minister of Housing. 1972, c. 7, s. 1, *part*; 1973, c. 121, s. 1, *amended*. Approval of descriptions under R.S.O. 1970, c. 349, s. 33

(3) Before making an application under subsection 1 of section 33 of *The Planning Act*, the owner of a property or someone authorized by him in writing may apply to the Minister of Housing to have the description or any part of the description exempted from such section 33, or from any provisions thereof, and where in the opinion of the Minister such exemption is appropriate in the circumstances, he may grant the exemption. Exemption

(4) Section 34 of *The Planning Act* does not apply in respect of descriptions made for the purposes of this Act. 1972, c. 7, s. 1, *part*. R.S.O. 1970, c. 349, s. 34, not to apply

SALE AND LEASE OF UNITS

51.—(1) Every agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall be deemed to contain, Implied covenants in agreement of purchase and sale

- (a) a covenant by the vendor to take all reasonable steps to register a declaration and description in respect of the property in which the unit is included without delay;
- (b) a covenant by the vendor to take all reasonable steps to sell the other residential units included in the property without delay other than any units mentioned in a statement under clause *c* of subsection 1 of section 54;
- (c) a covenant by the vendor to take all reasonable steps to deliver to the purchaser a registrable deed or transfer of the unit without delay; and
- (d) a provision that the vendor will not collect from the purchaser any money on behalf of the corporation. 1974, c. 133, s. 14, *part*.

Failure to
register
declaration
within a
specified
period

(2) Notwithstanding any provision to the contrary contained therein, an agreement of purchase and sale of a proposed unit for residential purposes shall not be terminated by the proposed declarant only by reason of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing.

Application
to court

(3) Notwithstanding subsection 2, the proposed declarant may apply to a judge of a county or district court and the judge may by order terminate the agreement if he is satisfied that,

- (a) the proposed declarant has taken all reasonable steps to register a declaration and description;
- (b) a declaration and description cannot be registered within a reasonable period of time; and
- (c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

Subsequent
registration
under Act

(4) The judge may, in an order under subsection 3, provide that a declaration and description shall not be registered in respect of the property in which the proposed unit is included during such period as he specifies in the order.

Registration
of order

(5) An order under subsection 3 is ineffective until a certified copy thereof is registered.

Payment
of purchase
price

(6) Where an agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes permits or requires the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the money paid in respect of such right or obligation to the proposed declarant shall be not greater, on a monthly basis, than the total of the following amounts:

1. The amount of interest that the purchaser would have paid, monthly, in respect of any mortgage or mortgages he is obligated to assume or give under the agreement of purchase and sale on delivery of a deed or transfer of the unit.
2. An amount reasonably estimated on a monthly basis for municipal taxes attributable to the proposed unit.
3. The projected monthly common expense contribution for that unit. 1974, c. 133, s. 14, part, amended.

(7) Where a purchaser takes possession of a proposed unit for residential purposes under an agreement that permits the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, notwithstanding the provisions of *The Landlord and Tenant Act*, the proposed declarant,

Rights and
duties of
proposed
declarant

R.S.O. 1970,
c. 236

- (a) shall provide those services and only those services that the proposed corporation will have a duty to provide to owners;
- (b) shall repair and maintain the property and the proposed unit in the same manner as the proposed corporation will have a duty to repair and maintain;
- (c) has the same right of entry that the proposed corporation will have; and
- (d) may withhold consent to an assignment of the occupancy agreement. *New.*

52.—(1) An agreement of purchase and sale entered into after this Act comes into force by a declarant or proposed declarant of a unit or proposed unit for residential purposes is not binding on the purchaser until the declarant or proposed declarant has delivered to the purchaser a copy of the current disclosure statement and all material amendments thereto. 1974, c. 133, s. 14, *part, amended.*

Disclosure
before sale

(2) The purchaser, before receiving delivery of a deed to or transfer of the unit, may rescind the agreement of purchase and sale within ten days after receiving the disclosure statement or, where there has been a material amendment thereto, within ten days after receiving the material amendment.

Rescission of
agreement

(3) A person may rescind an agreement of purchase and sale under subsection 2 by giving written notice of the rescission to the declarant or proposed declarant or to the solicitor of the declarant or proposed declarant.

Notice of
rescission

(4) Every declarant or proposed declarant who receives notice of rescission under subsection 3 from a person entitled to rescind the agreement of purchase and sale under subsection 2, shall forthwith refund, without penalty or charge, to the person giving notice, all money that he received from that person under the agreement that was credited as payment against purchase price.

On rescission,
money to be
refunded

(5) Where any statement or material required under this Act to be provided by a declarant or proposed declarant to a

Where
statement
false or
misleading

purchaser of a unit or proposed unit for residential purposes contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information, the corporation or any unit owner who relied on such statement or material is entitled, as against the declarant or the proposed declarant to damages for any loss sustained as a result of such reliance.

Disclosure
statement

(6) The disclosure statement referred to in subsection 1 shall contain and fully and accurately disclose,

- (a) the name and municipal address of the declarant or proposed declarant and of the property or proposed property;
- (b) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with any conditions that apply to the provision of amenities;
- (c) the portion of units or proposed units which the declarant or proposed declarant intends to market in blocks of units to investors;
- (d) a brief narrative description of the significant features of the existing or proposed declaration, by-laws and rules governing the use of common elements and units, and of any contracts or leases that may be subject to termination or expiration under section 39;
- (e) a budget statement for the one year period immediately following the registration of the declaration and the description;
- (f) where construction of amenities is not completed, a schedule of the proposed commencement and completion dates; and
- (g) any other matters required by the regulations to be disclosed.

Budget
statements

(7) The budget statement mentioned in clause *e* of subsection 6 shall set out,

- (a) the common expenses;
- (b) the proposed amount of each expense;
- (c) particulars of the type, frequency and level of the services to be provided;

- (d) the projected monthly common expense contribution for each type of unit;
- (e) a statement of the portion of the common expense to be paid into a reserve fund;
- (f) a statement of the assumed inflation factor;
- (g) a statement of any judgments against the corporation, the status of any pending lawsuits to which the corporation is a party and the status of any pending lawsuits material to the property of which the declarant or proposed declarant has actual knowledge;
- (h) any current or expected fees or charges to be paid by unit owners or any of them for the use of the common elements or part thereof and other facilities related to the property;
- (i) any services not included in the budget that the declarant or proposed declarant provides, or expenses that he pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
- (j) the amounts in all reserve funds; and
- (k) any other matters required by the regulations to be disclosed. *New.*

(8) Where the total amount incurred for the common expenses provided for in the budget statement exceeds the total of the proposed amounts set out in the statement, for the period covered by the budget statement mentioned in clause c of subsection 6 the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 39. 1974, c. 133, s. 14, *part, amended.*

Inaccurate
statement
of common
expenses

(9) Where the declarant shows any expected fees, charges, rents or other revenue to be paid to the corporation for the use of the common elements or assets or any part thereof or any other facilities related to the property and,

Where
revenue
shown on
budget
statement

- (a) where the total amount received is less than the expected fees, charges, rents or other revenue, the declarant shall forthwith pay to the corporation the

amount of the deficiency less the amount, if any, that the total of the proposed amounts for common expenses set out in the budget statement mentioned in clause *e* of subsection 6 exceeds the total amount incurred for common expenses for the period covered by the budget statement; or

- (b) where the total amount received is more than the expected fees, charges, rents or other revenue, the declarant may set off the amount of the excess against any amount he may be required to pay under subsection 8. *New.*

Trust
money

53.—(1) All money received by or on behalf of a proposed declarant from a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit for residential purposes before the registration of the declaration and description, other than money paid as rent or as an occupancy charge, shall, notwithstanding the registration of the declaration and description thereafter, be held in trust by the person receiving such money for the person entitled thereto in respect of the agreement and such money shall be held in a separate account designated as a trust account at a chartered bank or trust company or a loan company or credit union authorized by law to receive money on deposit or a Province of Ontario Savings Office until,

- (a) its disposition to the person entitled thereto; or
- (b) delivery of prescribed security to the purchaser for repayment. 1974, c. 133, s. 15, *part, amended.*

Interest

(2) Where an agreement of purchase and sale referred to in subsection 1 is terminated and the purchaser is entitled to the return of any money paid under the agreement, the proposed declarant shall pay to the purchaser interest on such money at the prescribed rate.

Idem

(3) Subject to subsection 2, where a purchaser of a proposed unit under an agreement of purchase and sale referred to in subsection 1 enters into possession or occupation of the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the proposed declarant shall pay interest at the prescribed rate on all money received by him on account of the purchase price from the day the purchaser enters into possession or occupation until the day a deed or transfer acceptable for registration is delivered to him.

Idem

(4) Subject to subsections 2 and 3, the proposed declarant is entitled to any interest earned on the money required to

be held in trust under subsection 1. 1974, c. 133, s. 15, *part*.

54.—(1) A declarant or proposed declarant shall not grant a lease of a unit or proposed unit for residential purposes unless, Leases of units

- (a) the lessee has entered into a *bona fide* agreement to purchase the unit;
- (b) the lease grants to the lessee a *bona fide* option to purchase the unit;
- (c) every agreement of purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or
- (d) written notice of the lessor's intention to lease the unit has been given to every purchaser under an agreement of purchase and sale, registered owner and mortgagee entitled to vote, and the period referred to in subsection 2 has expired or, where an application is made under subsection 2, it is finally disposed of. 1974, c. 133, s. 16, *part, amended*.

(2) Any person notified under clause *d* of subsection 1 may, within twenty-one days after receiving the notice, and on written notice to the declarant, apply to a judge of a county or district court, and the judge, if he is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant other relief as he considers proper. Application to court

(3) The notice mentioned in clause *d* of subsection 1 shall specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee. Contents of notice

(4) A declarant or proposed declarant may grant leases of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, provided that subsection 1 is complied with in respect of each lease. Terms of lease

(5) This section does not apply to the renewal of a lease of a unit or proposed unit where the lease was entered into before any agreement of purchase and sale of any unit or proposed unit included in the property is entered into. Exemption

Lease
defined

(6) In this section, "lease" includes a licence to use or occupy and any agreement in the nature of a lease. 1974, c. 133, s. 16, *part, amended*.

Offences

55. Every person who knowingly contravenes section 30, subsection 1 or 4 of section 40, subsection 1 of section 53, subsection 9 of section 56 or subsection 1 of section 59, or knowingly purports to enter into a lease in contravention of subsection 1 or 4 of section 54 is guilty of an offence and on summary conviction is liable to a fine of,

- (a) not more than \$25,000, where the person is a corporation; or
- (b) not more than \$2,000, where the person is other than a corporation. 1974, c. 133, s. 16.

BUREAU

Designating
bureau

R.S.O. 1970,
c. 89

56.—(1) The Lieutenant Governor in Council shall designate a non-profit corporation incorporated without share capital under *The Corporations Act* to be the bureau for the purposes of this Act.

Idem

(2) No corporation shall be designated under subsection 1 whose by-laws do not provide for representation of owners of condominium units on the board of directors.

Objects

(3) Upon its designation, the objects of the corporation are extended to include,

- (a) advising and assisting the public in condominium matters;
- (b) assisting in the resolution of disputes between condominium corporations and unit owners and between two or more unit owners and for this purpose appointing review officers and paying their remuneration;
- (c) disseminating information for the purpose of educating and advising condominium corporations and unit owners concerning condominium matters and the financial, operating and management practices of condominium corporations; and
- (d) assisting in the formulation and conduct of educational courses for property management.

(4) The moneys required for the purpose of defraying the organization and operating expenses of the bureau shall, until the 31st day of March, 1979, be paid out of the Consolidated Revenue Fund. Moneys

(5) The bureau shall appoint review officers who shall perform the duties and exercise the powers given to them by this Act and the regulations under the supervision of the bureau and shall perform such other duties as are assigned to them by the bureau. Review officers appointed

(6) All moneys payable under this Act to the bureau shall be retained by the bureau and applied to defray the expenses incurred and expenditures made in the carrying out of its duties under this Act and otherwise for the purposes of its objects set out in subsection 3. Revenues and expenses

(7) The bureau shall make a report annually to the Minister of Consumer and Commercial Relations upon the affairs of the bureau, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Annual reports

(8) Each corporation shall pay to the bureau an annual fee in the amount prescribed by regulation for each unit comprising the property and shall file such information and material as is prescribed by the regulations. Fee to bureau

(9) Every declarant shall file with the bureau the material set out in clause f, g, h and i of subsection 3 of section 26 prior to the meeting required under subsection 1 of section 26. Filing plans

(10) The bureau is not a Crown agency within the meaning of *The Crown Agency Act*. *New.* Bureau not Crown agency
R.S.O. 1970,
c. 100

57.—(1) Where there is a dispute between a corporation and an owner or between two or more owners in respect of any matter relating to this Act, the declaration, by-laws or rules, any party to the dispute may, prior to the commencement of any court proceeding in respect of the same matter, refer the matter in dispute to the bureau for resolution and shall notify all other parties affected. Dispute

(2) Within fourteen clear days after the matter has been referred to the bureau, the bureau shall give written notice to all parties of the date, time and place for the consideration Review by officer

of the matter in dispute and shall designate a person as review officer to review the matter in dispute.

Subject-matter of review

(3) For purposes of a review under subsection 2, the review officer may inquire into any matter relevant to the subject-matter of the dispute, whether or not previously brought to his attention by the parties.

Order

(4) Upon completing the review and subject to subsection 5, the review officer may make an order ordering any party to the review to do or refrain from doing any act that is the subject-matter of the review.

Notice

(5) Where the review officer proposes to make an order under subsection 4, he shall serve notice of his proposal together with written reasons therefor on all parties to the review.

Idem

(6) A notice under subsection 5 shall state that every party to the review is entitled to appeal the proposed order to the Commercial Registration Appeal Tribunal and shall specify the place where the appeal may be filed.

Order may be made after notice

(7) Where there is no appeal to the Commercial Registration Appeal Tribunal, the review officer may make his order upon the expiration of twenty-one days after the last service of notice under subsection 5 on a party to the review.

Order filed

(8) On the request of any party to the review proceedings, the review officer shall file a copy of any order made by him under subsection 4 in the office of the Registrar of the Supreme Court under section 19 of *The Statutory Powers Procedure Act, 1971*, that applies thereto.

1971. c. 47 does not apply

(9) Except as provided in subsection 8, *The Statutory Powers Procedure Act, 1971* does not apply to proceedings before the review officer designated by the bureau.

Appeal

(10) Every party to a review proceedings may appeal a review officer's proposal by filing a notice of appeal with the Commercial Registration Appeal Tribunal within twenty-one days after being served with notice of the review officer's proposal.

Idem

(11) On an appeal, the Commercial Registration Appeal Tribunal may proceed by way of a hearing *de novo* and after the hearing, the Tribunal may make any order it considers just and equitable and for such purposes the Tribunal shall substitute its opinion for that of the review officer.
New.

REGULATIONS

58.—(1) The Lieutenant Governor in Council may make Regulations regulations,

- (a) classifying properties for the purposes of the regulations;
- (b) prescribing the duties of officers appointed under *The Land Titles Act* or *The Registry Act* for the purpose of this Act; R.S.O. 1970,
cc. 234, 409
- (c) governing the method of describing in instruments of a property or any part of a property;
- (d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;
- (e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 4, surveys of the properties showing the units and common elements;
- (f) respecting the registration and recording of declarations, descriptions, by-laws, notices of termination and other instruments;
- (g) respecting the names of corporations;
- (h) respecting additions to the common elements;
- (i) requiring the payment of fees to officers appointed under *The Land Titles Act* or *The Registry Act*, and prescribing the amounts thereof;
- (j) prescribing forms and providing for their use;
- (k) governing funds intended for the payment of common expenses;
- (l) requiring and governing the books, accounts and records that shall be kept by condominium corporations and requiring and governing the accounting to members of condominium corporations in such manner and at such times as are prescribed;
- (m) exempting any class of person from this Act or the regulations or any provisions thereof;

- (n) prescribing security for the purposes of clause *b* of subsection 1 of section 53;
- (o) prescribing rates of interest that shall be paid on moneys required to be held in trust under this Act;
- (p) designating liens or claims for the purposes of clause *d* of subsection 2 of section 33;
- (q) prescribing statements and information required for purposes of subsection 8 of section 32;
- (r) regulating and governing the duties and powers of review officers appointed under subsection 5 of section 56;
- (s) prescribing the amounts of fees that are payable or chargeable under this Act;
- (t) prescribing information to be filed by corporations with the bureau;
- (u) prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations. R.S.O. 1970, c. 77, s. 25 (1); 1974, c. 133, s. 17, *amended*.

Application
of regulations

- (2) Any provision of any regulation may be made to apply to all properties or to any class of properties. R.S.O. 1970, c. 77, s. 25 (2).

Offer to sell
land together
with lease
of dwelling
prohibited

59.—(1) No person shall offer to sell any interest in land together with a grant of exclusive occupancy or use for residential purposes of part of a building located on the land where that person will retain an interest in the land as tenant-in-common with the offeree unless he does so as a declarant or proposed declarant under this Act.

Exemption
from subs. 1

- (2) The Lieutenant Governor in Council may make regulations exempting any person or group of persons from the provisions of subsection 1. *New*.

Act
supersedes
agreements

60. This Act applies notwithstanding any agreement to the contrary. *New*.

Repeals

61. The following are repealed:

1. *The Condominium Act*, being chapter 77 of the Revised Statutes of Ontario, 1970.

2. *The Condominium Amendment Act, 1972*, being chapter 7.
3. *The Condominium Amendment Act, 1973*, being chapter 121.
4. *The Condominium Amendment Act, 1974*, being chapter 133.
5. *The Condominium Amendment Act, 1977*, being chapter 67.

62. This Act comes into force on a day to be named by ^{Commence-}proclamation of the Lieutenant Governor. ^{ment}

63. The short title of this Act is *The Condominium Act*, ^{Short title} 1978.

An Act to revise
The Condominium Act

1st Reading

June 1st, 1978

2nd Reading

June 15th, 1978

3rd Reading

THE HON. L. GROSSMAN
Minister of Consumer and
Commercial Relations

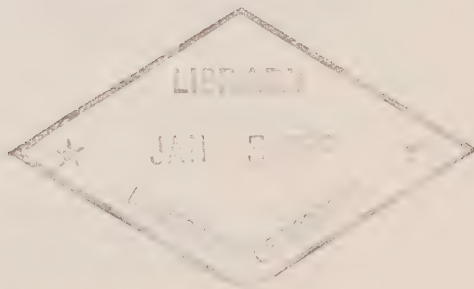
(Reprinted as amended by the
Administration of Justice Committee)

B 56
7 BILL 103
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2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978
//

An Act to revise The Condominium Act

THE HON. FRANK DREA
Minister of Consumer and Commercial Relations



BILL 103

1978

An Act to revise The Condominium Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “auditor” means a person licensed as a public accountant under *The Public Accountancy Act*; R.S.O. 1970,
c. 373
- (b) “board” means the board of directors of a corporation;
- (c) “buildings” means the buildings included in a property;
- (d) “bureau” means the corporation designated under section 56;
- (e) “by-law” means a by-law of a corporation;
- (f) “claim” includes a right, title, interest, encumbrance, or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;
- (g) “common elements” means all the property except the units;
- (h) “common expenses” means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in this Act or in a declaration;
- (i) “common interest” means the interest in the common elements appurtenant to a unit;
- (j) “common surplus” means the excess of all receipts of the corporation over the expenses;

- (*k*) “corporation” means a corporation created by this Act;
- (*l*) “declarant” means the owner or owners in fee simple of the land described in the description at the time of registration of a declaration and description of the land, and includes any successor or assignee of such owner or owners but does not include a *bona fide* purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;
- (*m*) “declaration” means the declaration specified in section 3, and includes any amendments;
- (*n*) “description” means the description specified in section 4;
- (*o*) “encumbrance” means a claim that secures the payment of money or the performance of any other obligation, and includes a charge under *The Land Titles Act*, a mortgage and a lien;
- (*p*) “mortgage” includes charge and “mortgagee” includes chargee;
- (*q*) “owner” means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;
- (*r*) “prescribed” means prescribed by the regulations;
- (*s*) “property” means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;
- (*t*) “proposed unit” means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a declaration and description have been registered in respect of the land;
- (*u*) “records” shall include those items enumerated in subsection 3 of section 26 and financial records prepared on behalf of the corporation, minutes of owners meetings and board meetings, as well as any amendments to the declaration, by-laws and rules;

(v) "registered" means registered under *The Land Titles Act* or *The Registry Act*; R.S.O. 1970,
cc. 234, 409

(w) "regulations" means the regulations made under this Act;

(x) "special by-law" means a by-law that is not effective until it is,

(i) passed by the board, and

(ii) confirmed, with or without variation, by owners who own not less than two-thirds of the units at a meeting duly called for that purpose;

(y) "surveyor" means an Ontario land surveyor registered under *The Surveyors Act*; R.S.O. 1970,
c. 452

(z) "unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space in accordance with the declaration and description. R.S.O. 1970, c. 77, s. 1 (1); 1974, c. 133, s. 1, *amended*.

(2) For the purposes of this Act, the ownership of land includes the ownership of space. R.S.O. 1970, c. 77, s. 1 (2). Ownership
of land

DECLARATION AND DESCRIPTION

2.—(1) A property shall comprise only freehold land and interests, if any, appurtenant to that land. Freehold
land only

(2) A declaration and description may be registered by or on behalf of the owner in fee simple of the land described in the description. Who may
register

(3) Where the land and the interests appurtenant to the land described in the description are not entirely within one land titles or registry division or not entirely under *The Land Titles Act* or *The Registry Act*, the description shall not be registered. Land must
be in one
division

(4) Where the land described in a description is situated in a provisional judicial district or in a county, part of a county, city or separated town to which *The Land Titles Act* applies, the declaration and description must be registered under that Act. Where land
in land
titles area

Where land
not in land
titles area
R.S.O. 1970,
cc. 234, 59, 409

(5) Where the land described in a description is situate in a county, part of a county, city or separated town to which *The Land Titles Act* does not apply, a certificate of title under *The Certification of Titles Act* showing the owner by whom the declaration and description are being registered as the owner in fee simple of the land shall be registered under *The Registry Act* before the declaration and description are registered.

Effect of
registration

(6) Upon registration of a declaration and description, the land and the interests appurtenant to the land described in the description are governed by this Act. R.S.O. 1970, c. 77, s. 2.

What
declaration
must contain

3.—(1) A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description and unless it contains,

- (a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;
- (b) the consent, in the prescribed form, of every person having a registered mortgage against the land or interests appurtenant to the land described in the description;
- (c) a statement, expressed in percentages, of the proportions of the common interests;
- (d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;
- (e) an address for service and a mailing address for the corporation; and
- (f) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners. R.S.O. 1970, c. 77, s. 3 (1); 1974, c. 133, s. 2 (1), *amended*.

Where consent
not to be
withheld

(2) The consent mentioned in clause *b* of subsection 1 shall not be withheld by reason only of the failure of the proposed declarant to enter into a specified number of agreements of purchase and sale for the sale of proposed units. *New*.

(3) In addition to the matters mentioned in subsection 1, ^{What} and in any other section in this Act, a declaration may ^{declaration} contain ^{may contain}

- (a) a specification of common expenses;
- (b) provisions respecting the occupation and use of the units and common elements;
- (c) provisions restricting gifts, leases and sales of the units and common interests;
- (d) a specification of duties of the corporation consistent with its objects; and
- (e) a specification of any allocation of the obligations to repair and to maintain the units and common elements. R.S.O. 1970, c. 77, s. 3 (2), *amended*.

(4) Subject to subsection 5, the declaration may be ^{Amendment} amended only with the consent of all owners and all persons ^{of} having registered mortgages against the units and common ^{declaration} interests. R.S.O. 1970, c. 77, s. 3 (3), *amended*.

(5) Where any provision in a declaration or by-law is ^{Inconsist-} inconsistent with the provisions of this Act, the provisions ^{ent} of this Act shall prevail and the declaration or by-law is ^{provisions} deemed to be amended accordingly. *New*.

(6) When a declaration is amended, the corporation shall ^{Registration} register a copy of the amendment executed by all the owners and all persons having registered mortgages against the units and common interests, and until the copy is registered the amendment is ineffective. R.S.O. 1970, c. 77, s. 3 (4).

(7) Notwithstanding subsections 4 and 6, the corporation ^{Change of} may by resolution of the board change its address for service ^{address for} and its mailing address and the change does not take effect ^{service} until a notice thereof in the prescribed form is registered.

(8) The corporation, on at least seven days notice to every ^{Amendment} owner and mortgagee, or an owner, on at least seven days ^{by judge} notice to the corporation and every other owner and mortgagee, may apply to a judge of the county or district court for an order amending the declaration or description and the judge, if he is satisfied that an amendment is necessary or desirable to correct an error or inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

Registration

(9) An amendment to a declaration or description made by an order under subsection 8 is ineffective until a certified copy of the order is registered. 1974, c. 133, s. 2 (2), *amended*.

What description must contain

4.—(1) A description shall contain,

- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
- (b) structural plans of the buildings;
- (c) a specification of the boundaries of each unit by reference to the buildings;
- (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
- (e) a certificate of a surveyor that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
- (f) a description of any interests appurtenant to the land that are included in the property,

prepared in accordance with the regulations.

Approval of description

(2) A description shall not be registered unless it has been approved in accordance with the regulations. R.S.O. 1970, c. 77, s. 4.

REGISTRATION

Index

5.—(1) Every land registrar in whose office a declaration and description are registered shall keep an index in the prescribed form to be known as the "Condominium Corporations Index".

Combined offices

(2) Where a land titles office is combined with a registry office, one index under subsection 1 shall be kept for all declarations and descriptions registered in the combined offices.

Condominium Register

(3) Every land registrar in whose office a declaration and description are registered shall keep a register in the prescribed form to be known as the "Condominium Register".

(4) Declarations, descriptions, by-laws, notices of termination, and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with this Act and the regulations, but, except as otherwise provided by this Act and the regulations, *The Land Titles Act* or *The Registry Act*, as the case may be, applies in respect of property governed by this Act. R.S.O. 1970, c. 77, s. 5; 1974, c. 133, s. 3.

This Act
to govern
registrations,
etc.

R.S.O. 1970,
cc. 234, 409

UNITS AND COMMON ELEMENTS

6.—(1) Units and common interests are real property for all purposes.

Nature of
units and
common
interests

(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of his unit.

Ownership
of units

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

Dangerous
activities

(4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. R.S.O. 1970, c. 77, s. 6.

Right to
entry

7.—(1) The owners are tenants in common of the common elements.

Ownership
of common
elements

(2) An undivided interest in the common elements is appurtenant to each unit.

Common
interests

(3) The proportions of the common interests are those expressed in the declaration.

Proportions

(4) Each owner may make reasonable use of the common elements subject to this Act, the declaration, the by-laws and the rules.

Use of
common
elements

(5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument that purports to separate the ownership of a unit from a common interest is void.

Ownership
not to be
separated

(6) Except as provided by this Act, the common elements shall not be partitioned or divided.

No division

- Encumbrances not enforceable (7) No encumbrance is enforceable against the common elements after the declaration and description are registered.
- Saving (8) Where, but for subsection 7, an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.
- Discharge (9) Any unit and common interest may be discharged from such an encumbrance by payments to the claimant of a portion of the sum claimed, determined by the proportions specified in the declaration for sharing the common interests.
- Idem (10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations. R.S.O. 1970, c. 77, s. 7 (1-10).
- Assessment (11) For the purposes of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel except for those parts of the common elements that are leased for business purposes under section 9 upon which the lessee carries on an undertaking for gain that will constitute separate parcels for business assessment under *The Assessment Act*. R.S.O. 1970, c. 77, s. 7 (11), *amended*.
- R.S.O. 1970, c. 32
- Where corporation deemed to be occupier (12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements. R.S.O. 1970, c. 77, s. 7 (12).

EASEMENTS

- Easements appurtenant to units 8.—(1) The following easements are appurtenant to each unit:
1. Where a building or any part of a building,
 - (a) moves after registration of the declaration and description; or
 - (b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the by-laws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.

2. An easement for the provision of any service through any installation in the common elements or any other unit.
3. An easement for support by the common elements and any other unit capable of providing support.

(2) The following easements are appurtenant to the common elements: Easements appurtenant to common elements

1. An easement for the provision of any service through any installation in any unit.
2. An easement for support by any unit capable of providing support. R.S.O. 1970, c. 77, s. 8.

9.—(1) The corporation may, by special by-law,

Easements and leases of common elements

- (a) lease any part of the common elements, except any part that the declaration specifies is to be used by the owners of one or more designated units and not by all the owners; and
- (b) grant or transfer an easement or licence through the common elements.

(2) A lease or grant or transfer or an easement or licence mentioned in subsection 1, signed by the authorized officers of the corporation under its seal, affects the interest of every owner in the common elements as if the lease, grant or transfer had been executed by him, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant or transfer was authorized by a special by-law of the corporation. 1974, c. 133, s. 4, *amended*. Binding on all owners

CORPORATION

10.—(1) The registration of a declaration and description Creation creates a corporation without share capital whose members are the owners from time to time. R.S.O. 1970, c. 77, s. 9 (1).

Name of corporation	(2) The land registrar shall assign a name to each corporation or proposed corporation in accordance with the regulations. 1974, c. 133, s. 5 (1).
R.S.O. 1970, cc. 89, 280 1976, c. 66 not to apply	(3) <i>The Corporations Act, The Corporations Information Act, 1976</i> and the provisions respecting mortmain of <i>The Mortmain and Charitable Uses Act</i> do not apply to the corporation. R.S.O. 1970, c. 77, s. 9 (3).
Corporation seal	11. —(1) The corporation shall have a seal that shall be adopted and may be changed by resolution of the directors.
Idem	(2) The name of the corporation shall appear in legible characters on the seal. <i>New.</i>
Objects	12. —(1) The objects of the corporation are to manage the property and any assets of the corporation. R.S.O. 1970, c. 77, s. 9 (4).
Corporation duty	(2) The corporation has a duty to control, manage and administer the common elements and the assets of the condominium corporation. <i>New.</i>
Duty to effect compliance	(3) The corporation has a duty to effect compliance by the owners with this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 9 (12), <i>amended.</i>
Duties	(4) The declaration or the by-laws may specify duties of the corporation consistent with its objects, responsibilities and duties. R.S.O. 1970, c. 77, s. 9 (13), <i>amended.</i>
Right to performance of duties	(5) Each owner and each person having a registered mortgage against a unit and common interest has the right to the performance of any duty of the corporation specified by this Act, the declaration, the by-laws and the rules. R.S.O. 1970, c. 77, s. 9 (14), <i>amended.</i>
Real and personal property	13. —(1) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.
Interest in assets	(2) The owners share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the by-laws. R.S.O. 1970, c. 77, s. 9 (15, 16).
Action by corporation	14. —(1) The corporation after giving written notice to all owners and mortgagees may, on its own behalf and on behalf of any owner, sue for and recover damages and costs

in respect of any damage to common elements, the assets of the corporation or individual units, and the legal and court costs in any such actions brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected.

(2) The corporation after giving written notice to all owners and mortgagees may sue on its own behalf and on behalf of any owner with respect to the common elements and any units, notwithstanding that the corporation was not a party to the contract in respect of which the action is brought, and the legal and court costs in an action brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected. Idem

(3) The notice referred to in subsections 1 and 2 is not required to be given in respect of an action brought in the small claims court. *New.* Idem

(4) Any judgment for payment in favour of the corporation in an action brought on its own behalf is an asset of the corporation. R.S.O. 1970, c. 77, s. 9 (18), *amended.* Idem

(5) The corporation may, as representative of the owners of the units, be sued in respect of any matter relating to the common elements or assets of the corporation. *New.* Corporation may be sued

(6) Where an action is commenced after this Act comes into force, a judgment for the payment of money against the corporation is also a judgment against each owner at the time of judgment for a portion of the judgment determined by the proportions specified in the declaration for sharing the common interests. Judgment against corporation

(7) Where an action has been commenced before this Act came into force, a judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses. R.S.O. 1970, c. 77, s. 9 (17), *amended.* Idem

15.—(1) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such greater number as the by-laws may provide, elected by the owners. R.S.O. 1970, c. 77, s. 9 (5), *amended.* Board of directors

Change in
number of
directors

(2) A corporation may by by-law increase or, subject to subsection 1, decrease the number of the directors as set out in its by-laws.

Age of
directors

(3) No person under eighteen years of age shall be a director of the corporation.

Qualifications

(4) No undischarged bankrupt or mentally incompetent person shall be a director and if a director becomes a bankrupt or a mentally incompetent person he thereupon ceases to be a director.

Consent

(5) A person who is elected or appointed a director is not a director unless,

(a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as a director; or

(b) when he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(6) For the purposes of subsection 5, a person who is elected or appointed as director and refuses under clause *a* of that subsection or fails to consent under clause *b* of that subsection shall be deemed not to have been elected or appointed as a director. *New.*

Term

(7) The term of the members of the board shall be three years or such lesser period as the by-laws may provide, but the directors may continue to act until their successors are elected, and directors are eligible for re-election. R.S.O. 1970, c. 77, s. 9 (6), *amended*.

Removal

(8) Any director may be removed before the expiration of his term by a vote of owners who together own a majority of the units and the owners may elect, in accordance with the by-laws dealing with the election of directors, any person qualified to be a member of the board for the remainder of the term of the director removed.

Vacancy

(9) If a vacancy in the membership of the board occurs, other than by way of removal under subsection 8 or as a result of the number of directors being increased, subject to subsection 11, the majority of the remaining members of the board may appoint any person qualified to be a member of the board to fill the vacancy until the next annual meeting at which time the vacancy shall be filled by election by the owners. 1974, c. 133, s. 5 (2), *amended*.

(10) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a meeting of the owners duly called for that purpose. Increase

(11) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a meeting of owners to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any owner. *New.* Election when no quorum

16.—(1) A quorum for the transaction of business is a majority of the members of the board or such greater number as the by-laws may provide. R.S.O. 1970, c. 77, s. 9 (8), *amended.* Quorum

(2) No business of a corporation shall be transacted by its board except at a meeting of directors at which a quorum of the board is present. Conduct of business

(3) Where there is a vacancy or vacancies in the board, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. Idem

(4) In addition to any other provision in the by-laws of a corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business, the general nature of which is specified in the notice calling the meeting. Calling meetings of directors

(5) In the absence of any other provision in that behalf in the by-laws of the corporation, at least ten days written notice of the time and place for the holding of the meeting shall be given to every director of the corporation, personally or by prepaid mail, addressed to him at his latest address as shown on the records of the corporation. *New.* Notice

17.—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the corporation, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent Disclosure by director of interest in contracts

to which such interest or information is within his knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum.

Interest
to be
material

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless the interest and the contract or transaction are both material.

When
declaration
of interest
to be made

(3) The declaration required in subsection 1 shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the corporation's business would not require approval by the directors or owners, at the first meeting of the directors held after the director becomes aware of it.

Effect of
declaration

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the director, if he was acting honestly and in good faith at the time the contract or transaction was entered into, is not by reason only of his holding the office of director accountable to the corporation or to its owners for any profit or gain realized from the contract or transaction, and the contract or transaction is not voidable by reason only of the director's interest therein.

Confirmation
by owners

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the corporation or to the owners for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of the owners duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

(6) For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the corporation is a sufficient declaration of interest in relation to any contract so made. *New.* General notice of interest

18.—(1) A corporation shall hold an annual meeting of the owners not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any owner or any mortgagee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation. Annual meetings

(2) The board, or any mortgagee holding mortgages on not less than 15 per cent of the units, may at any time call a meeting of the owners of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting. 1974, c. 133, s. 6, *part, amended.* Other meetings

(3) Unless otherwise provided in this Act, a quorum for the transaction of business at a meeting of owners is those owners present in person or represented by proxy owning $33\frac{1}{3}$ per cent of the units. *New.* Quorum

19.—(1) The board shall, upon receipt of a requisition in writing made by owners who together own at least 15 per cent of the units, call and hold a meeting of the owners and if the meeting is not called and held within thirty days of the receipt of the requisition, any of the requisitionists may call the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition. Requisition for owners' meeting

(2) The requisition shall state the nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the address for service of the corporation. 1974, c. 133, s. 6, *part, amended.* Requisition

20.—(1) At least ten days written notice of every meeting of the owners specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given to each owner or mortgagee entitled to vote, personally or by prepaid mail addressed to him at the address provided under subsection 2. Notice

(2) The corporation shall maintain a record upon which shall be entered each owner or mortgagee who notifies the corporation of his entitlement to vote and of his address for service, and the notice of a meeting required by subsection 1 Sufficient notice

shall be deemed to be sufficiently given if given in accordance with subsection 1 to those persons entered on the record twelve days before the date of the meeting. 1974, c. 133, s. 6, *part, amended*.

Right to
vote

(3) A mortgagee who receives a notice shall, in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and the owner of his intention to exercise such right at least two days before the date specified in the notice for the meeting. 1974, c. 133, s. 6, *part, amended*.

Records

21. The corporation shall keep adequate records, and any owner or his agent duly authorized in writing may inspect the records on reasonable notice and at any reasonable time. R.S.O. 1970, c. 77, s. 9 (11), *amended*.

Voting

22.—(1) All voting by owners shall be on the basis of one vote per unit and, where two or more persons entitled to vote in respect of one unit disagree on their vote, the vote in respect of that unit shall not be counted.

Idem

(2) On a show of hands or on a poll, votes may be given either personally or by proxy.

Proxy

(3) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting.

Idem

(4) A proxy need not be an owner.

Where not
entitled
to vote

(5) Except where, under this Act or the by-laws of the corporation, a unanimous vote of all the owners is required, an owner is not entitled to vote at any meeting if any contributions payable in respect of his unit are in arrears for more than thirty days prior to the meeting.

Majority
voting

(6) Unless otherwise provided in this Act, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast.

No vote
for parking
or storage
unit

(7) No owner is entitled to a vote in respect of a unit that is intended for parking or storage purposes. *New*.

Officers

23.—(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors and the same person may hold two or more offices.

(2) In the absence of other provisions in that behalf in the by-laws, the directors, Election and appointment

- (a) shall elect the president from among themselves;
- (b) shall appoint or elect the secretary; and
- (c) may appoint or elect one or more vice-presidents or other officers. *New.*

24.—(1) Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly and in good faith. *New.* Standards of care, etc., of directors

(2) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in his election or qualifications. R.S.O. 1970, c. 77, s. 9 (9). Defects

25.—(1) Subject to subsection 2, the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against, Indemnification of directors

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation.

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant. Idem

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof except insurance against a liability, cost, charge or expense of the director or Insurance

officer incurred as a result of a contravention of subsection 1 of section 24. *New.*

Election
of new
board

26.—(1) The board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the owners to elect a new board, and such meeting shall be held within twenty-one days after the calling of the meeting.

Owner,
etc., may
call
meeting

(2) If the meeting referred to in subsection 1 is not called within the time provided for by that subsection, any owner or any mortgagee entitled to vote may call the meeting. 1974, c. 133, s. 6, *part, amended.*

Things to
be turned
over to
the board

(3) At the meeting required under subsection 1, the declarant shall give to the board elected at that meeting,

- (a) the seal of the corporation;
- (b) the minute book for the corporation, containing the most current copies of the declaration, by-laws, rules and regulations and any amendments thereto;
- (c) copies of all agreements entered into by the corporation or the declarant or his representatives on behalf of the corporation, including the management contracts, deeds, leases, licences and those items set out in subsection 6 of section 52;
- (d) a record maintained under subsection 2 of section 20;
- (e) the existing warranties and guarantees for all the equipment, fixtures and chattels included in the sale of either the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;
- (f) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- (g) the original specifications indicating thereon all material changes;
- (h) the plans for underground site service, site grading, drainage and landscaping together with cable television drawings if available;
- (i) such other available plans and information not mentioned in clause *f*, *g*, or *h* but relevant to future repair or maintenance of the property;

- (j) an unaudited financial statement prepared as at a date not earlier than thirty days prior to the meeting;
- (k) a table depicting the maintenance responsibilities and indicating whether the corporation or the unit owners are responsible;
- (l) bills of sale or transfers for all items that are assets of the condominium corporation but not part of the real property;
- (m) a list detailing current replacement costs and life expectancy under normal maintenance conditions of all major capital items in the property, including, where applicable, those items set out in subsection 1 of section 36; and
- (n) all financial records of the corporation and of the declarant relating to the operation of the corporation from the date of registration of the declaration and the description.

(4) The declarant shall give to the board within sixty ^{Idem} days after the meeting required under subsection 1 an audited financial statement prepared as at the date of the meeting required under subsection 1. *New.*

27.—(1) The corporation shall obtain and maintain insurance on its own behalf and on behalf of the owners of the units and common elements, excluding improvements and betterments made or acquired by an owner, against major perils to the replacement cost thereof, and against such other perils as may be specified by the declaration or by-laws, and for this purpose the corporation shall be deemed to have an insurable interest in the units and common elements. ^{Corporation shall maintain insurance}

(2) Any payment by an insurer under a policy of insurance entered into under subsection 1 shall, notwithstanding the terms of the policy, be paid to the order of insurance trustees, if any, or otherwise shall be paid to or to the order of the corporation and, subject to subsection 2 of section 42, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may be effected lawfully. ^{Payment of insurance}

(3) Insurance obtained and maintained by a corporation under subsection 1 shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to his unit or his interest in the common ele- ^{Insurance under subs. 1 not other insurance}

ments and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective.

Insurance
non-
contributory
R.S.O. 1970,
c. 224

(4) Notwithstanding section 124 of *The Insurance Act* or the provisions of the policy, a policy of insurance issued under subsection 1 and any other policy of insurance, except another policy issued under subsection 1, are not liable to be brought into contribution with each other.

Liability
insurance

(5) The corporation shall obtain and maintain insurance against its liability resulting from breach of duty as occupier of the common elements or arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles, in addition to such other insurance as may be specified in the declaration or by-laws.

Act of
person does
not breach
policy

(6) Notwithstanding the terms of a policy issued under subsection 1, no act of any person shall be deemed to be a breach of the conditions of the policy where such act is prejudicial to the interests of the corporation or the owners.

Provision
for notice

(7) A policy of insurance issued under subsection 1 shall be deemed to include provision for sixty days notice sent by registered mail to be given by the insurer to the corporation and to the insurance trustees, if any, in the event of termination of the insurance by the insurer.

Application
of section

(8) In the event that any provision of a policy issued under subsection 1 or any part of *The Insurance Act* is in conflict or inconsistent with this section or any part thereof, the provisions of this section shall apply.

Capacity to
maintain
insurance

(9) Nothing in this section shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of any insurable interest.

Insurance
money to be
used for
repairs
R.S.O. 1970,
c. 279

(10) Notwithstanding any provision in a mortgage and notwithstanding subsection 2 of section 6 of *The Mortgages Act*, a mortgagee shall not require that any money received on an insurance of the property or any part thereof be applied in or towards the discharge of the money due under his mortgage and any such requirement is void.

Interpre-
tation

(11) For the purposes of subsection 1, "major perils" means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious mischief. R.S.O. 1970, c. 77, s. 15, *amended*.

BY-LAWS AND RESOLUTIONS

28.—(1) The board may pass by-laws, not contrary to ^{By-laws} this Act or to the declaration,

- (a) to govern the number, qualification, nomination, election, term of office and remuneration of the directors;
- (b) to regulate the meeting, quorum and functions of the board;
- (c) to govern the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (d) to govern the management of the property;
- (e) to govern the maintenance of the units and common elements;
- (f) to govern the use and management of the assets of the corporation;
- (g) specifying duties of the corporation;
- (h) to govern the assessment and collection of contributions towards the common expenses;
- (i) authorizing the borrowing of money to carry out the objects and duties of the corporation; and
- (j) respecting the conduct generally of the affairs of the corporation.

(2) Subject to subsection 5, a by-law passed under sub- ^{Confirmation} section 1 is not effective until it is confirmed, with or without variation, by owners who own not less than 51 per cent of the units at a meeting duly called for that purpose.

(3) A by-law relating to the remuneration of a director ^{Remuneration of directors} or directors shall fix the remuneration and the period for which it is to be paid. *New.*

(4) The by-laws shall be reasonable and consistent with ^{By-laws must be reasonable} this Act and the declaration.

Registration (5) When a by-law or special by-law is made by the corporation, the corporation shall register a copy of the by-law or special by-law together with a certificate executed by the corporation that the by-law was made in accordance with this Act, the declaration and the by-laws, and until the copy and certificate are registered the by-law is ineffective. R.S.O. 1970, c. 77, s. 10 (2, 3).

RULES GOVERNING USE OF COMMON ELEMENTS

House rules **29.**—(1) The board may make rules respecting the use of common elements and units or any of them to promote the safety, security or welfare of the owners and of the property or for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of other units. R.S.O. 1970, c. 77, s. 11 (1); 1974, c. 133, s. 8, *amended*.

Idem (2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

Compliance and enforcement (3) The rules shall be complied with and enforced in the same manner as the by-laws. R.S.O. 1970, c. 77, s. 11 (2, 3).

When rules effective (4) Subject to subsection 5, any rule made under subsection 1 shall be effective thirty days after notice thereof has been given to each owner unless the board is in receipt of a requisition in writing made under section 19 requiring a meeting of owners to consider the rules.

Idem (5) If a meeting of owners is required, the rule made under subsection 1 shall become effective only upon approval at such meeting of owners.

Owners amending or repealing rules (6) The owners may at any time after a rule becomes effective amend or repeal a rule at a meeting of owners duly called for that purpose. *New*.

Entry by canvassers **30.** No corporation or servant or agent of a corporation shall restrict reasonable access to the property by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal government or school board for the purpose of canvassing or distributing election material. 1974, c. 133, s. 9.

OBLIGATION OF OWNERS AND OCCUPIERS

Obligations and rights of owners, etc. **31.**—(1) Each owner is bound by and shall comply with this Act, the declaration, the by-laws and the rules.

(2) Each owner has a right to the compliance by the other owners with this Act, the declaration, the by-laws and the rules. Idem

(3) The corporation, and every person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration, the by-laws and the rules. Right of corporation and encumbrancers R.S.O. 1970, c. 77, s. 12, *amended*.

(4) Each person in occupation of a proposed unit is bound by and shall comply with the rules proposed by the proposed declarant where those rules are reasonable and consistent with this Act. Obligations and rights of occupiers

(5) Each person in occupation of a proposed unit has a right to the compliance by every other occupant of a proposed unit with the rules proposed by the proposed declarant. Idem

(6) The proposed declarant has a duty, until registration of the declaration and description, to effect compliance by occupiers of proposed units with the rules proposed by the declarant. Duty of proposed declarant *New*.

32.—(1) The owners shall contribute towards the common expenses in the proportions specified in the declaration. Duty of owners to contribute to common expenses R.S.O. 1970, c. 77, s. 13 (1).

(2) Any common surplus in a corporation shall be applied either against future common expenses or paid into the reserve fund, but shall not, other than on termination, be distributed to the owners or mortgagees. Application of common surplus *New*.

(3) The obligation of an owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment. No avoidance R.S.O. 1970, c. 77, s. 13 (3).

(4) Where an owner defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection 1 of this section or subsection 7 of section 41, the corporation has a lien for the unpaid amount against his unit and its appurtenant common interest together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collections of the unpaid amount. Lien 1974, c. 133, s. 10, *part*; 1977, c. 67, s. 1 (1), *amended*.

(5) The lien mentioned in subsection 4 expires three months after the default that gave rise to the lien first occurred unless the corporation within that time registers a notice of lien in the prescribed form, and, where the notice is Expiration of lien

registered in accordance with subsection 5 of section 33, no further notice or registration is required in respect of default in payment occurring or continuing after registration. 1977, c. 67, s. 1 (2), *amended*.

Lien
enforcement

(6) The lien may be enforced in the same manner as a mortgage. R.S.O. 1970, c. 77, s. 13 (5).

Discharge

(7) Upon payment of the unpaid amount together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount and upon demand, the corporation shall give the owner a discharge in the prescribed form. 1977, c. 67, s. 1 (3).

Certificate
of lien

(8) Any person acquiring or proposing to acquire an interest in a unit from an owner may request the corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of default in payment thereof, if any, by the owner, together with such statements and information as are prescribed by the regulations, and the certificate binds the corporation as against the person requesting the certificate in respect of any default or otherwise shown in the certificate, as of the day it is given.

Idem

(9) The corporation shall give the certificate and the statements and information referred to in subsection 8 within seven days after its receipt of the request therefor and, where the corporation fails to give the certificate, statements and information within the time prescribed, the corporation shall be deemed, as against the person requesting the certificate, to have given a certificate stating no default. 1974, c. 133, s. 10, *part, amended*.

Fee

(10) The corporation may charge a fee for providing the certificate, statements and information referred to in subsection 8, in the amount prescribed by regulation. *New*.

Lien has
priority

33.—(1) Where a lien created by subsection 4 of section 32 is in respect of a unit for residential purposes, that lien has priority over every registered and unregistered encumbrance notwithstanding that such encumbrance existed prior to the lien arising.

Where subs. 1
does not
apply

(2) Subsection 1 does not apply,

(a) to a lien arising before the 1st day of January, 1978;

(b) in respect of a claim of the Crown other than by way of a mortgage;

- (c) in respect of a claim for taxes, charges, rates or assessments levied or recoverable under *The Municipal Act, The Education Act, 1974, The Local Roads Boards Act, The Statute Labour Act or The Local Improvement Act*; or R.S.O. 1970, cc. 284, 256, 445, 255
1974, c. 109
- (d) to such lien or claim that may be designated by regulation. 1977, c. 67, s. 2, *part, amended*.
- (3) Every mortgage of a unit for residential purposes shall be deemed to contain a provision that, Provisions deemed in mortgage
- (a) the mortgagee has the right to collect the owner's contribution towards common expenses and shall forthwith pay any amount so collected to the corporation on behalf of the unit owner;
- (b) the owner's default in the payment of common expenses shall constitute default under the mortgage; and
- (c) the mortgagee shall have the right to pay the owner's contribution towards common expenses that shall from time to time fall due and be unpaid in respect of the mortgaged premises and that such payments together with all reasonable costs, charges and expenses incurred in respect thereto, shall be added to the debt thereby secured and shall be payable forthwith with interest at the rate payable on the mortgage, and, if after demand the owner fails to fully reimburse the mortgagee, the mortgage shall immediately become due and payable at the option of the mortgagee.
- (4) A corporation shall, where so requested by the holder of a mortgage on a unit for residential purposes, provide, free of charge, to the person making the request a written statement setting out, in respect of the unit, the common expenses of the owner and all payments thereof in default. Statement to mortgagee
- (5) Where a lien arises in respect of a unit for residential purposes, the corporation shall, on or before the day a notice of lien is registered, give notice of the lien to every encumbrancer whose encumbrance is registered against the title of the unit, by personal service of the notice or by sending the notice by registered prepaid post addressed to the encumbrancer at his last known address. Notice of lien to be given
- (6) Where notice of lien is not given as provided in subsection 5, then subsection 1 ceases to apply three months after Where notice of lien not given

the default that gave rise to the lien first occurred, provided that where notice is given after registration of notice of lien then the corporation may register another notice of lien, but subsection 1 shall continue to apply to any lien which arose not earlier than three months before the last registration of notice of lien. 1977, c. 67, s. 2, *part, amended*.

AUDITORS AND FINANCIAL STATEMENTS

Auditors

34.—(1) The owners at their first meeting after this Act comes into force shall appoint one or more auditors to hold office until the close of the next annual meeting and, if the owners fail to do so, the board shall forthwith make such appointment or appointments.

Idem

(2) The owners shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

Casual
vacancy

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

Removal of
auditor

(4) The owners may, by resolution passed by a majority of the votes cast at a meeting duly called for that purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term.

Notice to
auditor

(5) Before calling a meeting for the purpose of removing an auditor, the corporation shall, fifteen days or more before the giving of the notice of the meeting, give to the auditor,

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to owners in connection with the meeting.

Right of
auditor
to make
representa-
tions

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

(a) his proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or

(c) his resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting, a copy of such representations to each person entitled to receive notice of the meeting.

(7) The remuneration of an auditor appointed by the owners shall be fixed by the owners, or by the board if it is authorized so to do by the owners, and the remuneration of an auditor appointed by the board shall be fixed by the board. Remuneration

(8) If for any reason no auditor is appointed, the court may, on the application of an owner, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services. Appointment by court

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made. Notice of appointment

(10) No person shall be appointed or act as auditor of a corporation who is a director, officer, employee or manager of the corporation, has an interest in contracts of the corporation, or is a partner, employer or employee of any director, officer, employee or manager of the corporation. Persons disqualified as auditors

(11) This section does not apply to a corporation where the property consists of less than twenty-five units for residential purposes. *New.* Where section does not apply

35.—(1) The auditor shall make such examination as will enable him to report to the owners as required by subsection 2. Annual audit

(2) The auditor shall make a report to the owners on the financial statement, to be laid before the corporation at any annual meeting during his term of office, and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. Auditor's report

(3) Where the report under subsection 2 does not contain the unqualified opinion required thereby, the auditor shall state in his report the reasons therefor. Idem

Facts
discovered
after
statement

(4) Where facts come to the attention of the board or officers of the corporation that if known prior to the date of the last annual meeting of owners would have required a material adjustment to the financial statement presented to the meeting, the board or officers shall communicate such facts to the auditor who reported to the owners under this section and the board shall forthwith amend the financial statement and send it to the auditor.

Amendment
of auditor's
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report with respect to the financial statement in accordance with subsection 2 and the board or, if it fails to do so within a reasonable time, the auditor shall mail or deliver such amended report to the owners.

Idem

(6) The financial statement shall contain a statement of changes in net assets or a statement of source and application of funds, and the auditor shall include in his report a statement whether, in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein.

Idem

(7) The auditor in his report shall make such statements as he considers necessary if,

- (a) the corporation's financial statement is not in agreement with its accounting records;
- (b) the corporation's financial statement is not in accordance with the requirements of this Act;
- (c) he has not received all the information and explanations that he has required; or
- (d) proper accounting records have not been kept, so far as appears from his examination.

Right of
access, etc.

(8) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanations as, in his opinion, are necessary to enable him to report as required by subsection 2.

Auditor
may attend
owners'
meetings

(9) The auditor of a corporation is entitled to attend any meeting of owners and to receive all notices and other communications related to any such meeting that an owner is entitled to receive and to be heard at any such meeting that

he attends on any part of the business of the meeting that concerns him as auditor.

(10) At any meeting of owners, the auditor, if present, shall answer inquiries directed to him concerning the basis upon which he formed the opinion stated in the report made under subsection 2. Auditor must answer inquiries at owners' meetings

(11) The financial statement shall be approved by the board and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, and the auditor's report shall be attached to or accompany the financial statement. Financial statement approved by board

(12) The corporation shall, ten days or more before the date of the annual meeting of owners, send by prepaid mail or deliver to each owner at his latest address as shown on the records of the corporation and shall file with the bureau a copy of the financial statement and a copy of the auditor's report. Corporation to send copies of financial statements, etc., to owners

(13) The board shall lay before each annual meeting of owners, Statements laid before owners at annual meeting

- (a) a financial statement made in accordance with generally accepted accounting principles;
- (b) the report of the auditor to the owners; and
- (c) such further information respecting the financial position of the corporation as the by-laws of the corporation require. *New.*

RESERVE FUND

36.—(1) In this Act and the regulations, the declaration, by-laws and financial statements prepared in accordance with this Act, the declaration or by-laws, "reserve fund" means a fund set up by the corporation in a special account for major repair and replacement of common elements and assets of the corporation including where applicable without limiting the generality of the foregoing, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators, laundry, recreational and parking facilities. Reserve fund defined

(2) The corporation shall establish and maintain one or more reserve funds and shall collect from the owners, as part of their contribution towards common expenses, amounts that, calculated on the basis of expected repair and replacement costs and life expectancy of things comprising the common elements and the assets of the corporation, Reserve fund established and maintained

are reasonably expected to provide sufficient funds for major repair and replacement of common elements and assets of the corporation, but in no event shall the contributions to the reserve fund or funds be less than 5 per cent of the amount required for contributions to the common expenses exclusive of the reserve fund.

Idem (3) Three years after this Act comes into force, the contribution to the reserve fund or funds shall be not less than 10 per cent of the amount required for contributions to the common expenses exclusive of the reserve fund.

Idem (4) Any fund set up for any of the purposes mentioned in subsection 1 shall be deemed to be a reserve fund notwithstanding that it may not be so designated.

Use of reserve fund limited (5) No part of a reserve fund shall be used except for the purposes for which the fund was established.

Fund not available for distribution (6) The amount of a reserve fund shall constitute an asset of the corporation and shall not be distributed to any owner except on termination of the corporation.

Bureau may exempt from subss. 2, 3 (7) The bureau may, upon being satisfied that the corporation has sufficient reserve funds, exempt the corporation from the requirements set out in subsections 2 and 3 upon such terms and conditions and for such period of time as the bureau considers proper. *New.*

AUDIT COMMITTEE

Audit committee may be established **37.—**(1) Where the number of directors of a corporation is more than six, the directors may elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation, to hold office until the next annual meeting of the owners.

Auditor shall submit financial statement (2) The auditor shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board.

Auditor's right to appear (3) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

Committee convening at request of auditor (4) Upon the request of the auditor, the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the board or members. *New.*

MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

38.—(1) The corporation may by a vote of owners who own 80 per cent of the units make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation may by a vote of the owners make any other addition, alteration or improvement to or renovation of the common elements or may make any other change in the assets of the corporation. R.S.O. 1970, c. 77, s. 14 (1), *amended*. Substantial alterations

(2) A grant or transfer of an easement to the corporation is as effective as if the corporation owns land capable of being benefitted by the easement. 1974, c. 133, s. 11. Easement

(3) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any change in the assets of the corporation are common expenses. R.S.O. 1970, c. 77, s. 14 (2). Cost

(4) If any substantial addition, alteration or improvement to or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, made within ten days after the date of the vote referred to in subsection 1, purchase his unit and common interest. R.S.O. 1970, c. 77, s. 14 (3), *amended*. Dissenters

(5) Where the corporation and the owner who dissented do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration under *The Arbitrations Act* by serving a notice to that effect on the corporation. R.S.O. 1970, c. 77, s. 14 (4). Arbitration
R.S.O. 1970,
c. 25

AGREEMENTS

39.—(1) The corporation may, by by-law, terminate, on giving sixty days notice in writing, any agreement between the corporation and any person for the management of the property entered into at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units. 1974, c. 133, s. 12, *part, amended*. Management agreement

(2) Every agreement for the provision of services on a continuing basis, every lease of the common elements or part thereof for business purposes and every agreement for the provision of recreation facilities to the corporation on other than a non-profit basis entered into by a corporation after this Act comes into force and at a time when the majority of the members of the board were elected when the declarant was Agreements
expiring

the registered owner of a majority of the units that does not expire within twelve months after its effective date shall be deemed to expire twelve months after its effective date unless, within the twelve month period, the agreement is ratified by the board at a time when the majority of the board members were elected after the declarant ceased to be the registered owner of a majority of the units. *New.*

INVESTIGATION OF RECORDS

Examination
of records

40.—(1) Every person in receipt of money paid to or for the benefit of the corporation shall, upon reasonable notice and during normal business hours, make available for examination by the corporation or any owner or mortgagee, all records relating to the receipt and disposition of such money.

Application
to court

(2) Upon application to a judge of a county or district court by the corporation or any owner, or mortgagee, the judge, if satisfied that the application is made in good faith and that it is *prima facie* in the best interests of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as he considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection 1 and to make such audit of the accounts and records of such person as the judge considers necessary.

Power of
inspector
1971, c. 49

(3) An inspector appointed under subsection 2 has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such investigation or audit as if it were an inquiry under that Act.

Trust
money

(4) All money referred to in subsection 1 shall be held by the person in receipt thereof in trust for the performance of the duties and obligations in respect of which the money is paid, and he shall pay such money into a separate account at a chartered bank or trust company or a loan company or credit union authorized by law to receive money on deposit or a Province of Ontario Savings Office and shall designate the account as a trust account in the name of the corporation. 1974, c. 133, s. 12, *part, amended.*

REPAIRS AND MAINTENANCE

Interpre-
tation

41.—(1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after registration of the declaration and description.

Duty to
repair

(2) Subject to section 42, the corporation shall repair the units and common elements after damage.

- (3) The corporation shall maintain the common elements. Maintenance of common elements
- (4) Each owner shall maintain his unit. R.S.O. 1970, c. 77, s. 16 (1-4). Maintenance of units
- (5) Notwithstanding subsections 2, 3 and 4, the declaration may provide that, Declaration may provide otherwise
- (a) each owner shall, subject to section 42, repair his unit after damage;
 - (b) the owners shall maintain the common elements or any part of the common elements;
 - (c) the corporation shall maintain the units; or
 - (d) each owner shall maintain and repair after damage those parts of the common elements of which he has the exclusive use. R.S.O. 1970, c. 77, s. 16 (5), *amended*.
- (6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time. R.S.O. 1970, c. 77, s. 16 (6). Where corporation to make repairs for owners
- (7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section and the cost of such repairs shall be added to the owner's contribution toward common expenses. R.S.O. 1970, c. 77, s. 16 (7), *amended*. Consent
- (8) All warranties given with respect to workmanship and materials furnished to the property shall enure to the benefit of all unit owners from time to time and to the corporation. *New*. Warranties

WHERE DAMAGE OCCURS

- 42.**—(1) Where damage to the building occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to 25 per cent of the buildings. Determination of damage
- (2) Where there has been a determination that there has been substantial damage to 25 per cent of the buildings, the corporation shall repair within a reasonable time, unless, within sixty days after the determination made under subsection 1, by a vote of owners who own 80 per cent of the units, the owners vote for termination. R.S.O. 1970, c. 77, s. 17, *amended*. Repair of damage

TERMINATION

- 43.**—(1) Where, under subsection 2 of section 42, the owners vote for termination, the corporation shall, within Notice of termination

ten days of the vote, register a notice of termination in the prescribed form. R.S.O. 1970, c. 77, s. 18 (1), *amended*.

Effect of
registration
of notice

(2) Upon the registration of a notice of termination under subsection 1,

- (a) the government of the property by this Act is terminated;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination; and
- (e) all claims against the property created after the registration of the declaration and description, other than the encumbrances mentioned in clause *d*, are extinguished. R.S.O. 1970, c. 77, s. 18 (3).

Termination
by sale

44.—(1) Sale of the property or any part of the common elements may be authorized,

- (a) by a vote of owners who own 80 per cent of the units;
- (b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description; and
- (c) if the sale of part only of the common elements includes any portion of the common elements that are to be used by the owners of one or more designated units and not by all the owners, by the consent of the owners of the designated units affected.

(2) A deed or transfer shall be executed by the authorized officers of the corporation under its seal and a release or discharge shall be given by all persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 19 (1, 2), *amended*. Execution of conveyance

(3) Upon the registration of the instruments mentioned in subsection 2, Effect of registration of conveyance

(a) the government of the property or of the part of the common elements by this Act is terminated;

(b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered; and

(c) claims against the property or the part of the common elements created after the registration of the declaration and description are extinguished.

(4) Subject to subsection 5, the owners share the proceeds of the sale in the same proportions as their common interests. Proceeds

(5) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration under *The Arbitrations Act* by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration. Rights of dissenters

(6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection 5, each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. R.S.O. 1970, c. 77, s. 19 (3-6). Where proceeds inadequate

(7) Subject to subsection 8, where any part of the common elements are expropriated under *The Expropriations Act*, the owners shall share the proceeds in the same proportions as their common interests. Expropriation

R.S.O. 1970, c. 154

Idem

R.S.O. 1970,
c. 154

(8) Any portion of the proceeds received on expropriation under *The Expropriations Act* that is attributable to any portion of the common elements that are to be used only by the owners of designated units and not by all the owners shall be divided among the owners of the designated units affected in the proportions in which their interests are affected. *New.*

Termination
by notice
without sale

45.—(1) Termination of the government of the property by this Act may be authorized,

- (a) by a vote of owners who own 80 per cent of the units; and
- (b) by the consent of the persons having registered claims against the property created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 20 (1), *amended.*

Registration
of notice

(2) Where termination of the government of the property by this Act is authorized under subsection 1, the corporation shall register a notice of termination in the prescribed form, executed by the authorized officers of the corporation under its seal and by all the persons having registered claims against the property created after the registration of the declaration and description. R.S.O. 1970, c. 77, s. 20 (4), *amended.*

Effect of
registration

(3) Upon registration of a notice of termination under subsection 2,

- (a) the government of the property by this Act is terminated;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;
- (d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description and have the

same priority as they had before the registration of the notice of termination; and

- (e) all other claims against the property created after the registration of the declaration and description are extinguished. R.S.O. 1970, c. 77, s. 20 (3).

46.—(1) A corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order terminating the government of the property by this Act. ^{Termination by S.C.O.}

(2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the court shall have regard to,

- (a) the scheme and intent of this Act;
- (b) the probability of unfairness to one or more owners if termination is not ordered; and
- (c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

(3) Where an order of termination is made under sub-section 2, the court may include in the order any provisions that the court considers appropriate in the circumstances. ^{Ancillary matters}
R.S.O. 1970, c. 77, s. 21.

47. When the owners and the property cease to be governed by this Act, ^{Termination}

- (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;
- (b) the remainder of the assets of the corporation shall be distributed among the owners in the same proportions as the proportions of their common interests. R.S.O. 1970, c. 77, s. 9 (19), *amended*.

VOTING BY MORTGAGEES

48. Where a mortgage of a unit and common interest contains a provision that authorizes the mortgagee to exercise ^{Rights of mortgagees}

the right of the owner to vote or to consent, the mortgagee may exercise the right, and, where two or more such mortgages contain such a provision, the right may be exercised by the mortgagee who has priority. R.S.O. 1970, c. 77, s. 22, *amended*.

PERFORMANCE OF DUTIES

Application
for order
to require
performance
of duties

49.—(1) Where a duty imposed by this Act, the declaration, the by-laws or the rules is not performed, the corporation, any owner, the bureau, or any person having a registered mortgage against a unit and common interest, may apply to the county or district court for an order directing the performance of the duty. R.S.O. 1970, c. 77, s. 23 (1); 1974, c. 133, s. 13 (1), *amended*.

Idem

(2) The court may by order direct performance of the duty and may include in the order any provisions that the court considers appropriate in the circumstances. R.S.O. 1970, c. 77, s. 23 (2).

Tenant to
pay common
expense
default in
lieu of rent

(3) Where an owner who has leased his unit defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection 1 of section 32 and subsection 7 of section 41, the corporation may by written notice to the lessee require the lessee to pay to the corporation, and upon receipt of such notice the lessee shall pay, out of the rent due under the lease, an amount equal to the default and such payment shall constitute payment toward rent under the lease and the lessee shall not by reason only of such payment to the corporation be in default of his obligation under the lease. *New*.

Application
to lessees

(4) The lessee of a unit is subject to the duties imposed by this Act, the declaration, the by-laws and the rules on an owner, except those duties respecting common expenses, and this section applies in the same manner as to an owner and, where the lessee is in contravention of an order under this section or where he fails to pay, pursuant to a notice given under subsection 3, the court may terminate the lease. 1974, c. 133, s. 13 (2), *amended*.

Saving

(5) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. R.S.O. 1970, c. 77, s. 23 (3).

Notification
of unit lease

(6) Where the owner of a unit leases his unit, the owner shall notify the corporation that the unit is leased and shall provide to the corporation the lessee's name and the owner's address. *New*.

APPLICATION OF THE PLANNING ACT

50.—(1) Section 29 and clause *b* of subsection 1 of section 32 of *The Planning Act* do not apply in respect of dealings with whole units and common interests. 1972, c. 7, s. 1, *part, amended*. Application of subdivision control

(2) Subject to subsection 3, the provisions of section 33 of *The Planning Act* that apply to plans of subdivision apply, with necessary modifications, to descriptions under this Act, and a description shall not be registered unless approved or exempted by the Minister of Housing. 1972, c. 7, s. 1, *part*; 1973, c. 121, s. 1, *amended*. Approval of descriptions under R.S.O. 1970, c. 349, s. 33

(3) Before making an application under subsection 1 of section 33 of *The Planning Act*, the owner of a property or someone authorized by him in writing may apply to the Minister of Housing to have the description or any part of the description exempted from such section 33, or from any provisions thereof, and where in the opinion of the Minister such exemption is appropriate in the circumstances, he may grant the exemption. Exemption

(4) Section 34 of *The Planning Act* does not apply in respect of descriptions made for the purposes of this Act. 1972, c. 7, s. 1, *part*. R.S.O. 1970, c. 349, s. 34, not to apply

SALE AND LEASE OF UNITS

51.—(1) Every agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall be deemed to contain, Implied covenants in agreement of purchase and sale

- (a) a covenant by the vendor to take all reasonable steps to register a declaration and description in respect of the property in which the unit is included without delay;
- (b) a covenant by the vendor to take all reasonable steps to sell the other residential units included in the property without delay other than any units mentioned in a statement under clause *c* of subsection 1 of section 54;
- (c) a covenant by the vendor to take all reasonable steps to deliver to the purchaser a registrable deed or transfer of the unit without delay; and
- (d) a provision that the vendor will not collect from the purchaser any money on behalf of the corporation. 1974, c. 133, s. 14, *part*.

Failure to
register
declaration
within a
specified
period

(2) Notwithstanding any provision to the contrary contained therein, an agreement of purchase and sale of a proposed unit for residential purposes shall not be terminated by the proposed declarant only by reason of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing.

Application
to court

(3) Notwithstanding subsection 2, the proposed declarant may apply to a judge of a county or district court and the judge may by order terminate the agreement if he is satisfied that,

- (a) the proposed declarant has taken all reasonable steps to register a declaration and description;
- (b) a declaration and description cannot be registered within a reasonable period of time; and
- (c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

Subsequent
registration
under Act

(4) The judge may, in an order under subsection 3, provide that a declaration and description shall not be registered in respect of the property in which the proposed unit is included during such period as he specifies in the order.

Registration
of order

(5) An order under subsection 3 is ineffective until a certified copy thereof is registered.

Payment
of purchase
price

(6) Where an agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes permits or requires the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the money paid in respect of such right or obligation to the proposed declarant shall be not greater, on a monthly basis, than the total of the following amounts:

1. The amount of interest that the purchaser would have paid, monthly, in respect of any mortgage or mortgages he is obligated to assume or give under the agreement of purchase and sale on delivery of a deed or transfer of the unit.
2. An amount reasonably estimated on a monthly basis for municipal taxes attributable to the proposed unit.
3. The projected monthly common expense contribution for that unit. 1974, c. 133, s. 14, *part, amended*.

(7) Where a purchaser takes possession of a proposed unit for residential purposes under an agreement that permits the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, notwithstanding the provisions of *The Landlord and Tenant Act*, the proposed declarant,

Rights and
duties of
proposed
declarant

R.S.O. 1970,
c. 236

- (a) shall provide those services and only those services that the proposed corporation will have a duty to provide to owners;
- (b) shall repair and maintain the property and the proposed unit in the same manner as the proposed corporation will have a duty to repair and maintain;
- (c) has the same right of entry that the proposed corporation will have; and
- (d) may withhold consent to an assignment of the occupancy agreement. *New.*

52.—(1) An agreement of purchase and sale entered into after this Act comes into force by a declarant or proposed declarant of a unit or proposed unit for residential purposes is not binding on the purchaser until the declarant or proposed declarant has delivered to the purchaser a copy of the current disclosure statement and all material amendments thereto. 1974, c. 133, s. 14, *part, amended.*

Disclosure
before sale

(2) The purchaser, before receiving delivery of a deed to or transfer of the unit, may rescind the agreement of purchase and sale within ten days after receiving the disclosure statement or, where there has been a material amendment thereto, within ten days after receiving the material amendment.

Rescission of
agreement

(3) A person may rescind an agreement of purchase and sale under subsection 2 by giving written notice of the rescission to the declarant or proposed declarant or to the solicitor of the declarant or proposed declarant.

Notice of
rescission

(4) Every declarant or proposed declarant who receives notice of rescission under subsection 3 from a person entitled to rescind the agreement of purchase and sale under subsection 2, shall forthwith refund, without penalty or charge, to the person giving notice, all money that he received from that person under the agreement that was credited as payment against purchase price.

On rescission,
money to be
refunded

(5) Where any statement or material required under this Act to be provided by a declarant or proposed declarant to a

Where
statement
false or
misleading

purchaser of a unit or proposed unit for residential purposes contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information, the corporation or any unit owner who relied on such statement or material is entitled, as against the declarant or the proposed declarant to damages for any loss sustained as a result of such reliance.

Disclosure
statement

(6) The disclosure statement referred to in subsection 1 shall contain and fully and accurately disclose,

- (a) the name and municipal address of the declarant or proposed declarant and of the property or proposed property;
- (b) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with any conditions that apply to the provision of amenities;
- (c) the portion of units or proposed units which the declarant or proposed declarant intends to market in blocks of units to investors;
- (d) a brief narrative description of the significant features of the existing or proposed declaration, by-laws and rules governing the use of common elements and units, and of any contracts or leases that may be subject to termination or expiration under section 39;
- (e) a budget statement for the one year period immediately following the registration of the declaration and the description;
- (f) where construction of amenities is not completed, a schedule of the proposed commencement and completion dates; and
- (g) any other matters required by the regulations to be disclosed.

Budget
statements

(7) The budget statement mentioned in clause *e* of subsection 6 shall set out,

- (a) the common expenses;
- (b) the proposed amount of each expense;
- (c) particulars of the type, frequency and level of the services to be provided;

- (d) the projected monthly common expense contribution for each type of unit;
- (e) a statement of the portion of the common expense to be paid into a reserve fund;
- (f) a statement of the assumed inflation factor;
- (g) a statement of any judgments against the corporation, the status of any pending lawsuits to which the corporation is a party and the status of any pending lawsuits material to the property of which the declarant or proposed declarant has actual knowledge;
- (h) any current or expected fees or charges to be paid by unit owners or any of them for the use of the common elements or part thereof and other facilities related to the property;
- (i) any services not included in the budget that the declarant or proposed declarant provides, or expenses that he pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
- (j) the amounts in all reserve funds; and
- (k) any other matters required by the regulations to be disclosed. *New.*

(8) Where the total amount incurred for the common expenses provided for in the budget statement exceeds the total of the proposed amounts set out in the statement, for the period covered by the budget statement mentioned in clause e of subsection 6 the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 39. 1974, c. 133, s. 14, *part, amended.*

Inaccurate
statement
of common
expenses

(9) Where the declarant shows any expected fees, charges, rents or other revenue to be paid to the corporation for the use of the common elements or assets or any part thereof or any other facilities related to the property and,

Where
revenue
shown on
budget
statement

- (a) where the total amount received is less than the expected fees, charges, rents or other revenue, the declarant shall forthwith pay to the corporation the

amount of the deficiency less the amount, if any, that the total of the proposed amounts for common expenses set out in the budget statement mentioned in clause *e* of subsection 6 exceeds the total amount incurred for common expenses for the period covered by the budget statement; or

- (b) where the total amount received is more than the expected fees, charges, rents or other revenue, the declarant may set off the amount of the excess against any amount he may be required to pay under subsection 8. *New.*

Trust
money

53.—(1) All money received by or on behalf of a proposed declarant from a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit for residential purposes before the registration of the declaration and description, other than money paid as rent or as an occupancy charge, shall, notwithstanding the registration of the declaration and description thereafter, be held in trust by the person receiving such money for the person entitled thereto in respect of the agreement and such money shall be held in a separate account designated as a trust account at a chartered bank or trust company or a loan company or credit union authorized by law to receive money on deposit or a Province of Ontario Savings Office until,

- (a) its disposition to the person entitled thereto; or
- (b) delivery of prescribed security to the purchaser for repayment. 1974, c. 133, s. 15, *part, amended.*

Interest

(2) Where an agreement of purchase and sale referred to in subsection 1 is terminated and the purchaser is entitled to the return of any money paid under the agreement, the proposed declarant shall pay to the purchaser interest on such money at the prescribed rate.

Idem

(3) Subject to subsection 2, where a purchaser of a proposed unit under an agreement of purchase and sale referred to in subsection 1 enters into possession or occupation of the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the proposed declarant shall pay interest at the prescribed rate on all money received by him on account of the purchase price from the day the purchaser enters into possession or occupation until the day a deed or transfer acceptable for registration is delivered to him.

Idem

(4) Subject to subsections 2 and 3, the proposed declarant is entitled to any interest earned on the money required to

be held in trust under subsection 1. 1974, c. 133, s. 15, *part*.

54.—(1) A declarant or proposed declarant shall not ^{Leases of units} grant a lease of a unit or proposed unit for residential purposes unless,

- (a) the lessee has entered into a *bona fide* agreement to purchase the unit;
- (b) the lease grants to the lessee a *bona fide* option to purchase the unit;
- (c) every agreement of purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or
- (d) written notice of the lessor's intention to lease the unit has been given to every purchaser under an agreement of purchase and sale, registered owner and mortgagee entitled to vote, and the period referred to in subsection 2 has expired or, where an application is made under subsection 2, it is finally disposed of. 1974, c. 133, s. 16, *part, amended*.

(2) Any person notified under clause *d* of subsection 1 ^{Application to court} may, within twenty-one days after receiving the notice, and on written notice to the declarant, apply to a judge of a county or district court, and the judge, if he is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant other relief as he considers proper.

(3) The notice mentioned in clause *d* of subsection 1 shall ^{Contents of notice} specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee.

(4) A declarant or proposed declarant may grant leases ^{Terms of lease} of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, provided that subsection 1 is complied with in respect of each lease.

(5) This section does not apply to the renewal of a lease ^{Exemption} of a unit or proposed unit where the lease was entered into before any agreement of purchase and sale of any unit or proposed unit included in the property is entered into.

Lease
defined

(6) In this section, "lease" includes a licence to use or occupy and any agreement in the nature of a lease. 1974, c. 133, s. 16, *part, amended*.

Offences

55. Every person who knowingly contravenes subsection 3 of section 26, section 30, subsection 1 or 4 of section 40, subsection 5, 6 or 7 of section 52, subsection 1 of section 53, subsection 9 of section 56 or subsection 1 of section 59, or knowingly purports to enter into a lease in contravention of subsection 1 or 4 of section 54 is guilty of an offence and on summary conviction is liable to a fine of,

- (a) not more than \$25,000, where the person is a corporation; or
- (b) not more than \$2,000, where the person is other than a corporation. 1974, c. 133, s. 16, *amended*.

BUREAU

Designating
bureau

R.S.O. 1970,
c. 89

56.—(1) The Lieutenant Governor in Council shall designate a non-profit corporation incorporated without share capital under *The Corporations Act* to be the bureau for the purposes of this Act.

Idem

(2) No corporation shall be designated under subsection 1 whose by-laws do not provide for representation of owners of condominium units on the board of directors.

Objects

(3) Upon its designation, the objects of the corporation are extended to include,

- (a) advising and assisting the public in condominium matters;
- (b) assisting in the resolution of disputes between condominium corporations and unit owners and between two or more unit owners and for this purpose appointing review officers and paying their remuneration;
- (c) disseminating information for the purpose of educating and advising condominium corporations and unit owners concerning condominium matters and the financial, operating and management practices of condominium corporations; and
- (d) assisting in the formulation and conduct of educational courses for property management.

(4) The moneys required for the purpose of defraying the organization and operating expenses of the bureau shall, until the 31st day of March, 1979, be paid out of the Consolidated Revenue Fund. Moneys

(5) The bureau shall appoint review officers who shall perform the duties and exercise the powers given to them by this Act and the regulations under the supervision of the bureau and shall perform such other duties as are assigned to them by the bureau. Review officers appointed

(6) All moneys payable under this Act to the bureau shall be retained by the bureau and applied to defray the expenses incurred and expenditures made in the carrying out of its duties under this Act and otherwise for the purposes of its objects set out in subsection 3. Revenues and expenses

(7) The bureau shall make a report annually to the Minister of Consumer and Commercial Relations upon the affairs of the bureau, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Annual reports

(8) Each corporation shall pay to the bureau an annual fee in the amount prescribed by regulation for each unit comprising the property and shall file such information and material as is prescribed by the regulations. Fee to bureau

(9) Every declarant shall file with the bureau the material set out in clauses *f*, *g*, *h* and *i* of subsection 3 of section 26 prior to the meeting required under subsection 1 of section 26. Filing plans

(10) The bureau is not a Crown agency within the meaning of *The Crown Agency Act*. Bureau not Crown agency
R.S.O. 1970,
c. 100

(11) The bureau may exempt corporations from the provisions of subsections 2 and 3 of section 36 as set out in subsection 7 of section 36. *New.* Exemption by bureau

57.—(1) Where there is a dispute between a corporation and an owner or between two or more owners in respect of any matter relating to this Act, the declaration, by-laws or rules, any party to the dispute may, prior to the commencement of any court proceeding in respect of the same matter, refer the matter in dispute to the bureau for resolution and shall notify all other parties affected. Dispute

Review by
officer

(2) Within fourteen clear days after the matter has been referred to the bureau, the bureau shall give written notice to all parties of the date, time and place for the consideration of the matter in dispute and shall designate a person as review officer to review the matter in dispute.

Subject-
matter of
review

(3) For purposes of a review under subsection 2, the review officer may inquire into any matter relevant to the subject-matter of the dispute, whether or not previously brought to his attention by the parties.

Order

(4) Upon completing the review and subject to subsection 5, the review officer may make an order ordering any party to the review to do or refrain from doing any act that is the subject-matter of the review.

Notice

(5) Where the review officer proposes to make an order under subsection 4, he shall serve notice of his proposal together with written reasons therefor on all parties to the review.

Idem

(6) A notice under subsection 5 shall state that every party to the review is entitled to appeal the proposed order to the Commercial Registration Appeal Tribunal and shall specify the place where the appeal may be filed.

Order may
be made
after notice

(7) Where there is no appeal to the Commercial Registration Appeal Tribunal, the review officer may make his order upon the expiration of twenty-one days after the last service of notice under subsection 5 on a party to the review.

Order
filed

(8) On the request of any party to the review proceedings, the review officer shall file a copy of any order made by him under subsection 4 in the office of the Registrar of the Supreme Court under section 19 of *The Statutory Powers Procedure Act, 1971*, that applies thereto.

1971, c. 47
does not
apply

(9) Except as provided in subsection 8, *The Statutory Powers Procedure Act, 1971* does not apply to proceedings before the review officer designated by the bureau.

Appeal

(10) Every party to a review proceedings may appeal a review officer's proposal by filing a notice of appeal with the Commercial Registration Appeal Tribunal within twenty-one days after being served with notice of the review officer's proposal.

Idem

(11) On an appeal, the Commercial Registration Appeal Tribunal may proceed by way of a hearing *de novo* and after the hearing, the Tribunal may make any order it con-

siders just and equitable and for such purposes the Tribunal shall substitute its opinion for that of the review officer.
New.

REGULATIONS

58.—(1) The Lieutenant Governor in Council may make Regulations regulations,

- (a) classifying properties for the purposes of the regulations;
- (b) prescribing the duties of officers appointed under *The Land Titles Act* or *The Registry Act* for the purpose of this Act; R.S.O. 1970,
cc. 234, 409
- (c) governing the method of describing in instruments of a property or any part of a property;
- (d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;
- (e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 4, surveys of the properties showing the units and common elements;
- (f) respecting the registration and recording of declarations, descriptions, by-laws, notices of termination and other instruments;
- (g) respecting the names of corporations;
- (h) respecting additions to the common elements;
- (i) requiring the payment of fees to officers appointed under *The Land Titles Act* or *The Registry Act*, and prescribing the amounts thereof;
- (j) prescribing forms and providing for their use;
- (k) governing funds intended for the payment of common expenses;
- (l) requiring and governing the books, accounts and records that shall be kept by condominium corporations and requiring and governing the accounting to members of condominium corporations in such manner and at such times as are prescribed;

- (m) prescribing security for the purposes of clause *b* of subsection 1 of section 53;
- (n) prescribing rates of interest that shall be paid on moneys required to be held in trust under this Act;
- (o) designating liens or claims for the purposes of clause *d* of subsection 2 of section 33;
- (p) prescribing statements and information required for purposes of subsection 8 of section 32;
- (q) regulating and governing the duties and powers of review officers appointed under subsection 5 of section 56;
- (r) prescribing the amounts of fees that are payable or chargeable under this Act;
- (s) prescribing information to be filed by corporations with the bureau;
- (t) prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations. R.S.O. 1970, c. 77, s. 25 (1); 1974, c. 133, s. 17, *amended*.

Application
of regulations

- (2) Any provision of any regulation may be made to apply to all properties or to any class of properties. R.S.O. 1970, c. 77, s. 25 (2).

Offer to sell
land together
with lease
of dwelling
prohibited

59.—(1) No person shall offer to sell any interest in land together with a grant of exclusive occupancy or use for residential purposes of part of a building located on the land where that person will retain an interest in the land as tenant-in-common with the offeree unless he does so as a declarant or proposed declarant under this Act.

Exemption
from subs. 1

- (2) The Lieutenant Governor in Council may make regulations exempting any person or group of persons from the provisions of subsection 1. *New*.

Act
supersedes
agreements

60. This Act applies notwithstanding any agreement to the contrary. *New*.

Repeals

61. The following are repealed:

1. *The Condominium Act*, being chapter 77 of the Revised Statutes of Ontario, 1970.

2. *The Condominium Amendment Act, 1972*, being chapter 7.
3. *The Condominium Amendment Act, 1973*, being chapter 121.
4. *The Condominium Amendment Act, 1974*, being chapter 133.
5. *The Condominium Amendment Act, 1977*, being chapter 67.

62. This Act comes into force on a day to be named by ^{Commence-}proclamation of the Lieutenant Governor. ^{ment}

63. The short title of this Act is *The Condominium Act*, ^{Short title} 1978.

An Act to revise
The Condominium Act

1st Reading

June 1st, 1978

2nd Reading

June 15th, 1978

3rd Reading

December 8th, 1978

THE HON. FRANK DREA
Minister of Consumer and
Commercial Relations

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting
Motor Vehicle Access to Property by Road**



THE HON. W. D. MCKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs

EXPLANATORY NOTE

The Bill is designed to protect the interest of a person who is dependent upon a road (designated in the Bill as an "access road"), that is not a public highway, for motor vehicle access to his property or to boat docking facilities necessary to obtain access to his property. The Bill also designates, as a specific category of access road, a "common road", that is an access road upon which some public moneys have been expended for repair or maintenance. The Bill makes it an offence to close an access road except upon a judge's order or upon meeting one of the other exceptions set out in the Bill. Provision is made for the person seeking such a closing order to notify the parties affected of the application and to afford to such parties an opportunity to be heard. Notice of the application is by way of newspaper advertisement in the case of a common road; in the case of an access road that is not a common road, notice of the application is to be served personally or by registered mail on the owner of each parcel of land to which access would be deprived if the road were closed.

The Bill does not affect the rights of ownership in land nor does the granting or refusal of a closing order determine any question as to whether or not a road has the status of a public highway. Penalties are provided for the closing of an access road without a judge's order where such is required; in addition, the court may order the removal of a barrier or other obstacle erected or placed on an access road in contravention of the Act.

BILL 104

1978

An Act respecting Motor Vehicle Access to Property by Road

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "access road" means a road located on land not owned by a municipality and not dedicated and accepted as, or otherwise deemed at law to be, a public highway, that serves as a motor vehicle access route to one or more parcels of land;
- (b) "common road" means an access road on which public money has been expended for its repair or maintenance;
- (c) "judge" means a judge of a county or district court;
- (d) "motor vehicle" means a motor vehicle as defined in *The Highway Traffic Act*;
- (e) "road" means land used or intended for use for the passage of motor vehicles.

R.S.O. 1970.
c. 202

2.—(1) No person shall construct or place a barrier or other obstacle over an access road, not being a common road, that, as a result, prevents all road access to one or more parcels of land or to boat docking facilities therefor, not owned by that person unless,

When access
road may be
closed

- (a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of such application to the parties and in the manner directed by this Act and the judge has granted the application to close the road;

- (b) the closure is made in accordance with an agreement in writing with the owners of the land affected thereby;
- (c) the closure is of a temporary nature for the purposes of repair or maintenance of the road; or
- (d) the closure is made for a single period of no greater than twenty-four hours in a year for the purpose of preservation of prescriptive rights.

When common
road may be
closed

(2) No person shall construct or place a barrier or other obstacle over a common road that as a result prevents the use of the road unless,

- (a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of the application to the parties and in the manner directed by this Act and the judge has granted the application to close the road; or
- (b) the closure is of a temporary nature for the purposes of repair or maintenance of the road.

Notice

(3) Notice of an application to close an access road that is not a common road shall be served personally upon or sent by registered mail to the owner of each parcel of land served by the road who would, if the road were closed, be deprived of motor vehicle access to and from his land and, where the owner is not occupying the land, notice shall also be given to a tenant or occupant of the land by either,

- (a) handing the notice to an adult person who is a tenant or occupant of the land; or
- (b) posting the notice on the land in a place and manner that makes the notice conspicuous to an occupant of the land.

Idem

(4) Notice of an application to close a common road shall be published at least once a week for four successive weeks in a newspaper that is circulated in the area in which the proposed road closure is located, the last publication to be not less than ninety days before the date fixed for the hearing of the application, and any person who uses the road is entitled to be a party to the proceedings on the application.

Idem

(5) Notice of an application made under subsection 1 or 2 shall be given by registered mail to the clerk of the local

municipality and the clerk of the county or regional, district or metropolitan municipality in which the road is situated or, in the case of a road located in territory without municipal organization, notice shall be similarly given to the Minister of Northern Affairs.

(6) An application under subsection 1 or 2 shall be accompanied by an affidavit of the applicant in which shall be included a description of the road sought to be closed, the proposed location of the barrier or other obstacle, the reasons in support of the closure, and, in the case of an application under subsection 1, the names and addresses of the persons who would, if the road were closed, be deprived of access to their lands. Affidavit to accompany application

3. The judge may grant the closing order upon being satisfied that the closure of the road is reasonably necessary to prevent substantial damage or injury to the interests of the applicant or is reasonably necessary for some purpose in the public interest. When judge may grant order

4.—(1) Where notice as required under section 2 is not given, a judge may grant upon *ex parte* application an interim closing order if he is satisfied that the delay required to give notice would likely result in serious damage or injury to the interests of the applicant. Interim closing order

(2) A judge may make an interim closing order on such terms and conditions and for such duration as the judge considers proper in the circumstances. Terms and conditions

(3) A person entitled to notice at the time an interim closing is made may apply to a judge to have the order set aside and the judge may so order where he considers it proper in the circumstances. Setting aside order

5. An appeal, in accordance with the rules of court, lies from an order of the judge under section 2 or 4 to the Divisional Court. Appeal

6.—(1) Nothing in this Act shall be construed to confer any right in respect of the ownership of land where the right does not otherwise exist at law and nothing in this Act shall affect any alternative remedy at law available to any applicant or other person. Saving

(2) The granting of a closing order or the dismissal of an application for a closing order under this Act shall not be construed as a determination that the road is or is not a public highway. Order of closure or dismissal of application not determination of status of road

- Offence **7.**—(1) Every person who knowingly contravenes subsection 1 or 2 of section 2 is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.
- Order to
remove
barricade (2) Where a person is convicted of an offence under this Act, the court may order the person to remove the barrier or other obstacle.
- Commence-
ment **8.** This Act comes into force on the day it receives Royal Assent.
- Short title **9.** The short title of this Act is *The Road Access Act, 1978*.

An Act respecting
Motor Vehicle Access
to Property by Road

1st Reading

June 1st, 1978

2nd Reading

3rd Reading

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

(Government Bill)

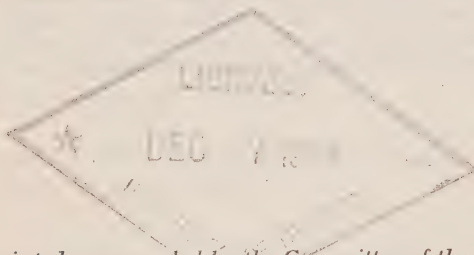
BILL 104

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting
Motor Vehicle Access to Property by Road**

THE HON. T. L. WELLS
Minister of Intergovernmental Affairs



(Reprinted as amended by the Committee of the Whole House)

TORONTO

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EXPLANATORY NOTE

The Bill is designed to protect the interest of a person who is dependent upon a road (designated in the Bill as an "access road"), that is not a public highway, for motor vehicle access to his property or to boat docking facilities necessary to obtain access to his property. The Bill also designates, as a specific category of access road, a "common road", that is an access road upon which some public moneys have been expended for repair or maintenance. The Bill makes it an offence to close an access road except upon a judge's order or upon meeting one of the other exceptions set out in the Bill. Provision is made for the person seeking such a closing order to notify the parties affected of the application and to afford to such parties an opportunity to be heard. Notice of the application is by way of newspaper advertisement in the case of a common road; in the case of an access road that is not a common road, notice of the application is to be served personally or by registered mail on the owner of each parcel of land to which access would be deprived if the road were closed.

The Bill does not affect the rights of ownership in land nor does the granting or refusal of a closing order determine any question as to whether or not a road has the status of a public highway. Penalties are provided for the closing of an access road without a judge's order where such is required; in addition, the court may order the removal of a barrier or other obstacle erected or placed on an access road in contravention of the Act.

BILL 104

1978

An Act respecting Motor Vehicle Access to Property by Road

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "access road" means a road located on land not owned by a municipality and not dedicated and accepted as, or otherwise deemed at law to be, a public highway, that serves as a motor vehicle access route to one or more parcels of land;
- (b) "common road" means an access road on which public money has been expended for its repair or maintenance;
- (c) "judge" means a judge of a county or district court;
- (d) "motor vehicle" means a motor vehicle as defined in *The Highway Traffic Act*;
- (e) "road" means land used or intended for use for the passage of motor vehicles.

R.S.O. 1970,
c. 202

2.—(1) No person shall construct or place a barrier or other obstacle over an access road, not being a common road, that, as a result, prevents all road access to one or more parcels of land or to boat docking facilities therefor, not owned by that person unless,

When access
road may be
closed

- (a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of such application to the parties and in the manner directed by this Act and the judge has granted the application to close the road;

- (b) the closure is made in accordance with an agreement in writing with the owners of the land affected thereby;
- (c) the closure is of a temporary nature for the purposes of repair or maintenance of the road; or
- (d) the closure is made for a single period of no greater than twenty-four hours in a year for the purpose of preventing the acquisition of prescriptive rights.

When common
road may be
closed

(2) No person shall construct or place a barrier or other obstacle over a common road that as a result prevents the use of the road unless,

- (a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of the application to the parties and in the manner directed by this Act and the judge has granted the application to close the road; or
- (b) the closure is of a temporary nature for the purposes of repair or maintenance of the road.

Notice

(3) Notice of an application to close an access road that is not a common road shall be served personally upon or sent by registered mail to the owner of each parcel of land served by the road who would, if the road were closed, be deprived of motor vehicle access to and from his land and, where the owner is not occupying the land, notice shall also be given to a tenant or occupant of the land by either,

- (a) handing the notice to an adult person who is a tenant or occupant of the land; or
- (b) posting the notice on the land in a place and manner that makes the notice conspicuous to an occupant of the land.

Idem

(4) Notice of an application to close a common road shall be published at least once a week for four successive weeks in a newspaper that is circulated in the area in which the proposed road closure is located, the last publication to be not less than ninety days before the date fixed for the hearing of the application, and any person who uses the road is entitled to be a party to the proceedings on the application.

Idem

(5) Notice of an application made under subsection 1 or 2 shall be given by registered mail to the clerk of the local

municipality and the clerk of the county or regional, district or metropolitan municipality in which the road is situated or, in the case of a road located in territory without municipal organization, notice shall be similarly given to the Minister of Northern Affairs.

(6) An application under subsection 1 or 2 shall be accompanied by an affidavit of the applicant in which shall be included a description of the road sought to be closed, the proposed location of the barrier or other obstacle, the reasons in support of the closure, and, in the case of an application under subsection 1, the names and addresses of the persons who would, if the road were closed, be deprived of access to their lands.

3. The judge may grant the closing order upon being satisfied that the closure of the road is reasonably necessary to prevent substantial damage or injury to the interests of the applicant or is reasonably necessary for some purpose in the public interest ^{When judge may grant order} and the judge may impose such terms and conditions as the judge considers are reasonable and just under the circumstances, including a requirement that a suitable alternate road be provided.

4.—(1) Where notice as required under section 2 is not given, a judge may grant upon *ex parte* application an interim closing order ^{Interim closing order} if he is satisfied that the delay required to give notice would likely result in serious damage or injury to the interests of the applicant.

(2) A judge may make an interim closing order on such terms and conditions and for such duration as the judge ^{Terms and conditions} considers proper in the circumstances.

(3) A person entitled to notice at the time an interim closing is made may apply to a judge to have the order set aside and the judge may so order where he considers it proper ^{Setting aside order} in the circumstances.

5. An appeal, in accordance with the rules of court, lies ^{Appeal} from an order of the judge under section 2 or 4 to the Divisional Court.

6.—(1) Nothing in this Act shall be construed to confer ^{Saving} any right in respect of the ownership of land where the right does not otherwise exist at law and nothing in this Act shall affect any alternative remedy at law available to any applicant or other person.

Order of
closure or
dismissal of
application
not
deter-
mination
of status of
road

(2) The granting of a closing order or the dismissal of an application for a closing order under this Act shall not be construed as a determination that the road is or is not a public highway.

Offence

7.—(1) Every person who knowingly contravenes subsection 1 or 2 of section 2 is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

Order to
remove
barricade

(2) Where a person is convicted of an offence under this Act, the court may order the person to remove the barrier or other obstacle.

Temporary
closing of
forest roads
R.S.O. 1970,
c. 380

8. Nothing in this Act prevents the temporary closing of a public forest road or a private forest road within the meaning of *The Public Lands Act* where an emergency exists in the opinion of the district manager.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Road Access Act, 1978*.

BILL 104

An Act respecting
Motor Vehicle Access
to Property by Road

1st Reading

June 1st, 1978

2nd Reading

November 21st, 1978

3rd Reading

THE HON. T. L. WELLS
Minister of Intergovernmental Affairs

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 104

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting
Motor Vehicle Access to Property by Road**

THE HON. T. L. WELLS
Minister of Intergovernmental Affairs



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO



BILL 104

1978

An Act respecting Motor Vehicle Access to Property by Road

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "access road" means a road located on land not owned by a municipality and not dedicated and accepted as, or otherwise deemed at law to be, a public highway, that serves as a motor vehicle access route to one or more parcels of land;
- (b) "common road" means an access road on which public money has been expended for its repair or maintenance;
- (c) "judge" means a judge of a county or district court;
- (d) "motor vehicle" means a motor vehicle as defined in *The Highway Traffic Act*;
- (e) "road" means land used or intended for use for the passage of motor vehicles.

R.S.O. 1970,
c. 202

2.—(1) No person shall construct or place a barrier or other obstacle over an access road, not being a common road, that, as a result, prevents all road access to one or more parcels of land or to boat docking facilities therefor, not owned by that person unless,

When access
road may be
closed

- (a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of such application to the parties and in the manner directed by this Act and the judge has granted the application to close the road;

- (b) the closure is made in accordance with an agreement in writing with the owners of the land affected thereby;
- (c) the closure is of a temporary nature for the purposes of repair or maintenance of the road; or
- (d) the closure is made for a single period of no greater than twenty-four hours in a year for the purpose of preventing the acquisition of prescriptive rights.

When common
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- (a) the person has made application by way of originating notice of motion to a judge for an order closing the road and has given ninety days notice of the application to the parties and in the manner directed by this Act and the judge has granted the application to close the road; or
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Notice

(3) Notice of an application to close an access road that is not a common road shall be served personally upon or sent by registered mail to the owner of each parcel of land served by the road who would, if the road were closed, be deprived of motor vehicle access to and from his land and, where the owner is not occupying the land, notice shall also be given to a tenant or occupant of the land by either,

- (a) handing the notice to an adult person who is a tenant or occupant of the land; or
- (b) posting the notice on the land in a place and manner that makes the notice conspicuous to an occupant of the land.

Idem

(4) Notice of an application to close a common road shall be published at least once a week for four successive weeks in a newspaper that is circulated in the area in which the proposed road closure is located, the last publication to be not less than ninety days before the date fixed for the hearing of the application, and any person who uses the road is entitled to be a party to the proceedings on the application.

Idem

(5) Notice of an application made under subsection 1 or 2 shall be given by registered mail to the clerk of the local

municipality and the clerk of the county or regional, district or metropolitan municipality in which the road is situated or, in the case of a road located in territory without municipal organization, notice shall be similarly given to the Minister of Northern Affairs.

(6) An application under subsection 1 or 2 shall be accompanied by an affidavit of the applicant in which shall be included a description of the road sought to be closed, the proposed location of the barrier or other obstacle, the reasons in support of the closure, and, in the case of an application under subsection 1, the names and addresses of the persons who would, if the road were closed, be deprived of access to their lands. Affidavit to accompany application

3. The judge may grant the closing order upon being satisfied that the closure of the road is reasonably necessary to prevent substantial damage or injury to the interests of the applicant or is reasonably necessary for some purpose in the public interest and the judge may impose such terms and conditions as the judge considers are reasonable and just under the circumstances, including a requirement that a suitable alternate road be provided. When judge may grant order

4.—(1) Where notice as required under section 2 is not given, a judge may grant upon *ex parte* application an interim closing order if he is satisfied that the delay required to give notice would likely result in serious damage or injury to the interests of the applicant. Interim closing order

(2) A judge may make an interim closing order on such terms and conditions and for such duration as the judge considers proper in the circumstances. Terms and conditions

(3) A person entitled to notice at the time an interim closing is made may apply to a judge to have the order set aside and the judge may so order where he considers it proper in the circumstances. Setting aside order

5. An appeal, in accordance with the rules of court, lies from an order of the judge under section 2 or 4 to the Divisional Court. Appeal

6.—(1) Nothing in this Act shall be construed to confer any right in respect of the ownership of land where the right does not otherwise exist at law and nothing in this Act shall affect any alternative remedy at law available to any applicant or other person. Saving

Order of
closure or
dismissal of
application
not
deter-
mination
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road

(2) The granting of a closing order or the dismissal of an application for a closing order under this Act shall not be construed as a determination that the road is or is not a public highway.

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Temporary
closing of
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R.S.O. 1970,
c. 380

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9. This Act comes into force on the day it receives Royal Assent.

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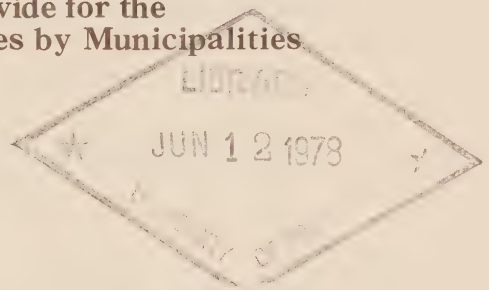
THE HON. T. L. WELLS
Minister of Intergovernmental Affairs

BILL 105

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to provide for the
Licensing of Businesses by Municipalities**



THE HON. W. D. McKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill removes from *The Municipal Act* a large number of provisions for the licensing and regulating of a variety of specific trades or businesses and confers a general authority on all local municipalities to pass by-laws to licence, regulate and govern any business carried on within the municipality, provided the terms of any such licensing and regulating by-law do not conflict with Provincial statutes or regulations thereunder dealing with any particular business.

Among the principal features of the Bill are the following:

1. Authority is conferred on the councils of all local municipalities to pass by-laws for licensing, regulating and governing any business carried on within the municipality (s. 2 (1)).
2. The specific powers that are comprised within the general power to license, regulate and govern are set out: some examples of these included powers are,
 - (a) the power to prohibit the carrying on of a business without a licence (s. 2 (3) (a));
 - (b) the power to define a class or classes of business and to separately license each such class (s. 2 (3) (c));
 - (c) the power to regulate the hours of operation of a business (s. 2 (3) (d));
 - (d) subject to certain exceptions, the power to require an applicant for a licence to submit to an examination to determine his competence in the relevant field (s. 2 (3) (e));
 - (e) the power to require persons carrying on a business to maintain adequate insurance coverage (s. 2 (3) (g));
 - (f) the power to refuse, revoke or suspend a licence following a hearing either by council or by a committee appointed by council (s. 2 (3) (h)).
 - (g) the power to fix a fee not exceeding \$5 per annum for a licence or where a pre-licensing inspection is required, \$25 per annum (s. 2 (3) (j)).
3. Where a licensing by-law conflicts with Provincial statutes or regulations thereunder the statute or regulation prevails (s. 2 (4)).
4. The Lieutenant Governor in Council may by regulation exempt specified businesses from the operation of municipal licensing by-laws (s. 2 (5)).
5. Monopoly rights are not to be granted (s. 3).
6. Licensing by-laws automatically expire 5 years after their passage (s. 6).
7. Certain additional powers as specified may be exercised in respect of body-rub parlours, adult entertainment parlours, taxicabs, buses and cartage vehicles, billiard tables, auctioneers and others (s. 4 (1-6)).
8. Where a licence is revoked, a proportionate part of the fee is to be refunded (s. 4 (8)).
9. The included powers set out in s. 2 (3) of the Bill are conferred in respect of by-laws passed under those sections of *The Municipal Act* that remain in that Act for the licensing of certain businesses (s. 5).

10. A large number of provisions relating to licensing and regulating specific business presently to be found in *The Municipal Act* are repealed (ss. 10-29).
11. Certain other statutes and provisions to be found outside *The Municipal Act* relating to licensing are repealed (s. 30).
12. The Act is to come into force on the 1st day of January, 1979 (s. 32).

BILL 105

1978

An Act to provide for the Licensing of Businesses by Municipalities

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, “business” means any trade, calling, business, occupation, manufacture or industry and includes the sale or hire of goods or services on an intermittent or one-time basis. Interpre-
tation

2.—(1) Notwithstanding any provision in any other general or special Act, but subject to subsection 4, by-laws may be passed by the councils of local municipalities for licensing, regulating and governing any business carried on within the municipality. Licensing,
regulating,
etc.,
businesses

(2) Where a person in pursuit of a business exposes samples, patterns or specimens of any goods, wares or merchandise that are to be delivered in the municipality afterwards, he shall, for the purpose of subsection 1, be deemed to be carrying on business in the municipality. Where
business
deemed
carried on in
municipality

(3) The power to license, regulate and govern a business includes, Included
powers

- (a) the power to prohibit the carrying on of or the engaging in the business without a licence;
- (b) the power to license, regulate or govern the place or premises used in the carrying on of such business and the persons carrying it on or engaged in it;
- (c) the power to define a class or classes of a business and to separately license, regulate and govern each of such class or classes or to specify that any of such class or classes shall not be subject to the provisions, or to any particular provision, of the by-law;

(d) subject to paragraph 1 and sections 357 and 358 of *The Municipal Act*, the power to regulate the hours of operation of the business:

1. Nothing in this clause confers the power to regulate the hours of operation of a shop as defined in subsection 1 of section 355 of *The Municipal Act*;

(e) subject to paragraph 3, the power to require an applicant, as a condition of the granting to him of a licence, to submit to an examination to determine his competence to carry on or engage in the business or any class of the business in respect of which he is applying for a licence and to refuse to grant a licence or to grant a licence upon conditions to such an applicant in respect of a business or any class of a business where he fails to pass the required examination:

1. The power to require an examination of an applicant for a licence to carry on or engage in a business includes the power to require an examination of an applicant who did not hold a licence to carry on or engage in that business in the municipality for a period immediately preceding the period for which he is applying for the licence and of an applicant or holder of a licence where the licence last held by him for the carrying on or engaging in of the business in the municipality or in another municipality was revoked on the grounds that the applicant or holder of the licence was shown to have carried on or engaged in the business in an incompetent manner whether or not such grounds were the sole grounds on which the licence was revoked.

A. Where the holder of a licence fails to pass an examination required of him under paragraph 1, the council may revoke his licence.

2. The power to require an examination of an applicant for a licence to carry on or engage in a business includes the power to exempt from such requirement any applicant who holds such certificate or other evidence of qualification as may be prescribed in the by-law.

3. Where a person who holds a certificate of apprenticeship or a certificate of qualification issued under *The Apprenticeship and Tradesmen's Qualification Act* applies for a licence to engage in or carry on the business in respect of which the certificate was issued, he shall not be required to submit to an examination as a condition of the granting to him of the licence, but a licence granted to such a person under a by-law passed pursuant to this section may be revoked or suspended on the grounds that he has been shown to have carried on or engaged in the business in an incompetent manner and upon such revocation or suspension, he is no longer entitled to the benefit of this paragraph;

R.S.O. 1970,
c. 24

- (f) the power to regulate, govern and inspect the premises, facilities, equipment, vehicles and other personal property used or kept for hire in connection with the carrying on of the business and to provide for imposing a fine upon any person carrying on or engaged in the business who refuses to allow the carrying out of an inspection at any reasonable time pursuant to a by-law passed under this clause;
- (g) the power to require the persons carrying on or engaged in the business to provide such public liability, property damage, cargo, or other insurance in such form and to such amounts of coverage as may be prescribed in the by-law, and where such insurance is not so provided, the council may refuse to grant a licence to that person for the carrying on of that business or may revoke or suspend any such licence;
- (h) the power to grant or refuse a licence for the carrying on or engaging in of such business or to revoke or suspend such licence and to make any suspension subject to such terms or conditions as council may prescribe:

1. Subject to *The Theatres Act*, the exercise of the power mentioned in this clause is in the discretion of the council, which discretion shall be exercised upon such grounds as are set out in a by-law passed under subsection 1, and a decision made pursuant to the exercise of that power is final.

R.S.O. 1970,
c. 459

2. The council shall not refuse to grant a licence to any applicant or suspend or revoke the licence of any person without first affording to such applicant or person the opportunity to be heard.
3. The council may provide for hearings under paragraph 2 to be conducted and opportunities for such hearings to be afforded by a committee to consist of one or more persons, at least one of whom shall be a member of council, and the provisions of section 242*b* of *The Municipal Act* apply with necessary modifications to hearings conducted and opportunities for hearings afforded by a committee under this paragraph.
4. The council shall not refuse to grant a licence with respect to the carrying on of a business by reason only of the location of such business except that the council shall refuse to grant a licence where the location of the business proposed to be carried on is such that the carrying on of the business would be in contravention of a by-law passed under section 35 of *The Planning Act* or a predecessor of such section or of an order of the Minister made under clause *a* of subsection 1 of section 32 of *The Planning Act* or of a regulation made by the Minister under section 6 of *The Parkway Belt Planning and Development Act, 1973*, or would be in contravention of subsection 1 of section 23 of *The Niagara Escarpment Planning and Development Act, 1973*.
5. The council may refuse to grant a licence or may revoke or suspend a licence where the business in respect of which the licence is to be or has been granted is to be carried on or is carried on in contravention of a by-law of the municipality;

(i) the power to fix the time for which the licence shall be in force;

(j) subject to paragraph 1, the power to fix a fee not to exceed \$5 per annum to be paid for the licence.

R.S.O. 1970,
c. 284

R.S.O. 1970,
c. 349

1973,
cc. 53, 52

1. Where an inspection is required in respect of a business as a condition precedent of the granting of a licence to carry on or engage in the business, a fee not to exceed \$25 per annum may be fixed for the licence.

(4) Where the provisions of a by-law passed under subsection 1 are in conflict with, Conflict

- (a) the provisions of any Act or of any regulation or rule made under any Act for licensing, regulating or otherwise controlling any business or the persons carrying on or engaged in any business; or
- (b) the provisions of any Act or regulation made under any Act authorizing the licensing, regulation or control in any manner of any business, or the persons carrying on or engaged in any business,

the provisions of the Act or regulation or rule, as the case may be, prevail to the extent of the conflict.

(5) Notwithstanding subsection 1, the Lieutenant Governor in Council may make regulations providing that any business or class of business shall not be subject to, Regulations

- (a) a by-law passed under this Act; or
- (b) those provisions of a by-law passed under this Act that implement such of the powers set out in subsection 3 as are specified in the regulation.

3. Subject to section 252 of *The Municipal Act* and to section 6 of *The Ferries Act* and to section 100 of *The Telephone Act*, a council shall not confer on any person the exclusive right of exercising, within the municipality, any business, or impose a special tax on any person exercising it, or require a licence to be taken for exercising it, unless authorized or required by this or any other Act so to do. Granting
monopolies
prohibited
R.S.O. 1970.
cc. 284, 165.
457

4.—(1) Where a by-law has been passed under subsection 1 of section 2 for licensing or regulating body-rub parlours, such by-law may, Scope of
by-law.
body-rub
parlours

- (a) limit the number of licences to be granted, in accordance with clause c, and fix a fee to be paid for the licence;
- (b) provide for regulating the placement, construction, size, nature and character of signs, advertising, and

advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting body-rub parlours or for the prohibition of such signs, advertising, or advertising devices;

- (c) notwithstanding paragraph 4 of clause *h* of subsection 3 of section 2, define the area or areas of the municipality in which body-rub parlours may or may not operate and may limit the number of licences to be granted in respect of body-rub parlours in any such area or areas in which they are permitted;
- (d) prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under a by-law mentioned in this subsection from permitting any person under the age of eighteen years to enter or remain in the body-rub parlour or any part thereof;
- (e) provide that no premises in which a body-rub parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law:
 1. Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law mentioned in this subsection has occurred in respect of a body-rub parlour, he may enter such body-rub parlour, at any time of the night or day, for purposes of carrying out the enforcement of the by-law.
 2. For the purpose of any prosecution or proceeding under a by-law mentioned in this subsection, the holding out to the public that services described in paragraph 4 are provided in premises or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is a body-rub parlour.
 3. Nothing in this subsection affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

4. For the purposes of this subsection,

- i. "body-rub parlour" includes any premises or part thereof where a body-rub is performed, offered or solicited in pursuance of a trade, calling, business or occupation, but does not include any premises or part thereof where the body-rubs performed are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario; and
- ii. "body-rub" includes the kneading, manipulating, rubbing, massaging, touching or stimulating, by any means, of a person's body or part thereof, but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario.

(2) Where a by-law has been passed under subsection 1 of section 2 for licensing or regulating adult entertainment parlours, such by-law may, Scope of
by-law, adult
entertain-
ment parlours

- (a) limit the number of licences to be granted, in accordance with clause *c*, and fix a fee to be paid for the licence;
- (b) regulate the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting adult entertainment parlours or any class or classes thereof or for the prohibition of such signs, advertising or advertising devices;
- (c) notwithstanding paragraph 4 of clause *h* of subsection 3 of section 2, define the area or areas of the municipality in which adult entertainment parlours or any class or classes thereof may or may not operate and may limit the number of licences to be granted in respect of adult entertainment parlours or any class or classes thereof in any such area or areas in which they are permitted;

- (d) notwithstanding clause *d* of subsection 3 of section 2 and section 355 of *The Municipal Act*, regulate the hours of operation of adult entertainment parlours or any class or classes thereof;
- (e) prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under a by-law mentioned in this subsection from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof;
- (f) provide that no premises in which an adult entertainment parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law:
 1. Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law mentioned in this subsection has occurred in respect of an adult entertainment parlour, he may enter such adult entertainment parlour, at any time of the night or day, for purposes of carrying out the enforcement of the by-law.
 2. For the purpose of any prosecution or proceeding under a by-law mentioned in this subsection, the holding out to the public that goods or services described in paragraph 4 are provided in premises, or any part thereof, is admissible in evidence as *prima facie* proof that the premises or part thereof is an adult entertainment parlour.
 3. Nothing in this subsection affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.
 4. In this subsection,
 - (a) "adult entertainment parlour" means any premises or part thereof in which is provided in pursuance of a trade, calling, business or occupation, goods

or services appealing to or designed to appeal to, erotic or sexual appetites or inclinations;

- (b) "goods" includes books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other reading, viewing or listening matter;
- (c) "to provide" when used in relation to goods includes to sell, offer to sell or display for sale, by retail or otherwise such goods, and "providing" and "provision" have corresponding meanings;
- (d) "to provide" when used in relation to services includes to furnish, perform, solicit, or give such services and "providing" and "provision" have corresponding meanings;
- (e) "services" includes activities, facilities, performances, exhibitions, viewings and encounters;
- (f) "services designed to appeal to erotic or sexual appetites or inclinations" includes,
 - (i) services of which a principal feature or characteristic is the nudity or partial nudity of any person,
 - (ii) services in respect of which the word "nude", "naked", "topless", "bottomless", "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.

5. A by-law mentioned in this subsection does not apply to premises or trades, callings, businesses or occupations carried on in premises licensed under *The Theatres Act* or licensed under *The Liquor Licence Act, 1975*, or licensed under a by-law mentioned in subsection 1.

Scope of
by-law,
taxicab
brokers, etc.

(3) Where a by-law has been passed under subsection 1 of section 2 for licensing or regulating taxicab brokers or owners or drivers of cabs or buses used for hire or owners, operators or drivers of motor or other vehicles used for hire for the carriage of goods or passengers, such by-law may,

- (a) fix a fee to be paid for the licence;
- (b) establish the rates or fares to be charged by the owners, operators or drivers of such vehicles for the conveyance of goods or passengers either wholly within the municipality or to any point not more than five kilometres beyond its limits and provide for the collection of such rates or fares;
- (c) limit the number of cabs or buses used for hire or motor or other vehicles used for hire for the carriage of goods or passengers, or any class or classes thereof, that may be operated in the municipality:

1. In this subsection, "taxicab broker" means any person who accepts calls in any manner for taxicabs that are used for hire and that are owned by persons other than himself, his immediate family or his employer.

2. No by-law mentioned in this subsection passed by the Council of the City of Mississauga shall apply to owners and drivers of cabs, other than cabs licensed by the said council, while such cabs are engaged in the conveyance of goods or passengers, if such conveyance commenced at the Toronto International Airport.

Scope of
by-law,
billiard
tables, etc.

(4) Where a by-law has been passed under subsection 1 of section 2 for licensing or regulating the keeping or letting of billiard, pool or other like tables, such by-law may limit the number of licences to be granted in respect of such a business or any class thereof and may limit the number of tables in respect of which such a licence may be granted.

Scope of
by-law,
salesmen

(5) Where a by-law has been passed under subsection 1 of section 2 for the licensing, regulating and governing of persons who go from place to place or to a particular place with goods, wares or merchandise for sale,

- (a) the licensee shall at all times while carrying on his business have his licence with him and shall upon demand exhibit it to any municipal or peace officer, and if he fails to do so is guilty of an offence, unless the same is accounted for satisfactorily, and

on summary conviction is liable to a fine not to exceed \$200;

- (b) if a peace officer demands the production of a licence by any persons to whom the by-law applies and the demand is not complied with, it is the duty of the peace officer and he has power to arrest such person without a warrant and to take him before the nearest justice of the peace, there to be dealt with according to the law.

(6) Where a by-law has been passed under subsection 1 of section 2 for licensing or regulating auctioneers or other persons selling or putting up for sale goods, wares, merchandise or effects by public auction, such by-law does not apply to a sheriff or bailiff offering for sale goods or chattels seized under an execution or distrained for rent.

Auctioneers,
etc., by-law
not to apply
to sheriff

(7) Where the council of a local municipality is empowered by the provisions of this Act to fix a fee to be paid for a licence, the council may provide for enforcing payment of the fee and, subject to any provision fixing a maximum fee that may be charged for a licence in respect of any business, the fee may be in the nature of a tax for the privilege conferred by it.

Licence
fee may
be tax

(8) Where a licence granted in respect of a business is revoked and a fee has been paid for the granting thereof, the licensee is entitled to a refund of a part of the licence fee proportionate to the unexpired part of the term for which the licence was granted.

Refund
when
licence
revoked

5. Subsection 3 of section 2 and subsections 7 and 8 of section 4 apply, with necessary modifications, to the powers of the council of a municipality under *The Municipal Act* for licensing, regulating or governing a business or the persons carrying it on or engaged in it or the place or things used for carrying it on except that where there is a conflict between the provisions of this section and the provisions of *The Municipal Act*, the provisions of that Act prevail to the extent of the conflict.

Application
to licensing
powers
under
R.S.O. 1970,
c. 284

6. A by-law passed or continued in force under the authority of this Act, or so much of such by-law as is still in force, shall upon the expiry of five years from the date of its passing or from the date this Act comes into force, whichever is later, be deemed to have been repealed.

When by-laws
deemed
repealed

7. For the purpose of any prosecution or proceeding under a by-law passed under this Act or *The Municipal Act*

Statement of
clerk, etc., as
to licensing
or
non-licensing
R.S.O. 1970,
c. 284

for licensing, regulating, governing, classifying or inspecting any trade, calling, business or occupation, a statement as to the licensing or non-licensing of any premises or person in respect of any trade, calling, business or occupation, purporting to be signed by the clerk of a municipality or of a regional or metropolitan municipality or by the chief administrative officer of a licensing commission, is, without proof of the office or signature of the said clerk or officer, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in such prosecution or proceeding.

Offence

8.—(1) A by-law mentioned in subsection 1 or 2 of section 4 may provide that every person who contravenes the by-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year, or to both.

Corporation.
maximum
penalty

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed on the corporation is \$25,000 and not as provided therein.

Order closing
premises

9.—(1) Where a person is convicted of carrying on or engaging in, on, in or in respect of any premises or part thereof, a trade, calling, business or occupation without a licence required by a by-law mentioned in subsection 1 or 2 of section 4, the court shall order that the premises or part thereof be closed to any use for any period not exceeding two years.

Idem

(2) Where a person is convicted of a contravention of a by-law mentioned in subsection 1 or 2 of section 4, other than carrying on or engaging in a trade, calling, business or occupation without a licence so to do, and the court decides that the owner or other person occupying the premises or part thereof in respect of which the conviction was made knew or ought to have known of the conduct which formed the subject-matter of the conviction or of any pattern of similar conduct, the court may order that the premises or part thereof be closed to any use for any period not exceeding two years.

Suspension of
closing order

(3) Upon the application by originating notice of motion of any person who has an interest in the premises ordered closed under subsection 1 or 2 and upon,

- (a) being satisfied that the use to which the premises will be put will not be in contravention of any by-law mentioned in subsection 1 or 2 of section 4; and

- (b) the posting by the applicant of a cash bond in the sum of \$10,000 or such greater sum as the court determines, for such term as the court determines, for the purpose of assuring that the premises will not be used in contravention of any such by-law,

the court may make an order suspending any order made under subsection 1 or 2 for such period and upon such conditions as are specified by the court.

(4) Where, upon application brought by originating notice of motion, the court is satisfied that, Discharge of closing order

- (a) there has been or will be a *bona fide* change in effective ownership of the premises subsequent to the commission of an offence described in subsection 1 or 2; and

- (b) the new owner satisfies the court that he can ensure that there will be no contravention of any by-law mentioned in subsection 1 or 2 of section 4,

the court may discharge an order made under subsection 1 or 2.

(5) Where an order is made under subsection 1 or 2, the police force responsible for policing in the municipality or regional or metropolitan municipality, shall bar entry to all entrances to the premises or part or parts thereof named in the order until the order has been suspended or discharged pursuant to this section. Barring of entry

(6) Where an order made under subsection 1 or 2 is suspended under subsection 3 and a person is thereafter convicted of an offence for contravention of a by-law mentioned in subsection 1 or 2 of section 4 in respect of the premises or part thereof referred to in the order, a judge of the county or district court may, upon summary application, order the forfeiture of the bond and the payment to the Crown of the proceeds and may order that the suspension of the order be lifted and that the order be reinstated. Forfeiture of bond

(7) No appeal lies from an order made under subsection 6. No appeal

(8) The municipality or metropolitan or regional municipality which passed a by-law described in subsection 1 or 2, the contravention of which was the basis for an order made under the provisions of either such subsection, is a party to any proceedings instituted under subsection 3, 4 or 6 in Service of notice

respect of such order, and shall be served in accordance with the rules of the court with a copy of the notice initiating the proceedings.

Where by-law
deemed passed
by council

(9) For the purposes of subsection 8, where the by-law under which the conviction was made was passed by a licensing commission for a municipality, or regional or metropolitan municipality, as the case may be, the by-law shall be deemed to have been passed by the council of the municipality or regional or metropolitan municipality, as the case may be.

Application
for suspension
or discharge
of closing
order

(10) Where an appeal is taken from an order made under subsection 1 or 2 or from a conviction in respect of which the order was made, the appellant may apply under subsection 3 for an order suspending the order made under subsection 1 or 2 until the disposition of the matter under appeal, or any person may apply under subsection 4 for a discharge of the order, but the fact that such an appeal is commenced does not stay the order.

Term of
closing order

(11) An order made under subsection 1 or 2 shall take effect upon the pronouncement thereof and shall remain in effect during the term of the order, except to the extent that it is suspended pursuant to subsection 3 or until it is discharged pursuant to subsection 4.

Description
of premises

(12) The description of any premises or part thereof affected by an order made under subsection 1 or 2 shall be sufficiently made in such order by reference to the municipal address of such premises.

Registration

(13) An order made under subsection 1 or 2 may be registered in the land registry office in which the title to the place described in the order is recorded.

Interpre-
tation
R.S.O. 1970,
c. 450

(14) In subsections 1 and 2, "court" means a "summary conviction court" or an "appeal court" as defined by *The Summary Convictions Act*, and in subsections 3 and 4, "court" means the county or district court of the county or district in which the premises are situate.

R.S.O. 1970,
c. 284, s. 246,
repealed

10. Section 246 of *The Municipal Act*, being chapter 284 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1975 (2nd Session), chapter 20, section 1, is repealed.

R.S.O. 1970,
c. 284, s. 247,
repealed

11. Section 247 of the said Act is repealed.

- 12.** Paragraphs 26 and 77 of section 352 of the said Act are repealed. R.S.O. 1970, c. 284, s. 352, pars. 26, 77, repealed
- 13.**—(1) Paragraphs 8, 17, 60, 119 and 131 of subsection 1 of section 354 of the said Act are repealed. R.S.O. 1970, c. 284, s. 354 (1) pars. 8, 17, 60, 119, 131, repealed
- (2) Paragraph 132 of subsection 1 of the said section 354, as amended by the Statutes of Ontario, 1972, chapter 124, section 10, is repealed. R.S.O. 1970, c. 284, s. 354 (1) par. 132, repealed
- (3) Paragraphs 133, 134, 136, 137, 138 and 139 of subsection 1 of the said section 354 are repealed. R.S.O. 1970, c. 284, s. 354 (1) pars. 133, 134, 136-139, repealed
- 14.** Paragraphs 1 and 3 of section 368 of the said Act are repealed. R.S.O. 1970, c. 284, s. 368, pars. 1, 3, repealed
- 15.** Section 368*a* of the said Act, as enacted by the Statutes of Ontario, 1975, chapter 56, section 8 and amended by 1978, chapter 17, section 1, is repealed. R.S.O. 1970, c. 284, s. 368*a*, repealed
- 16.** Section 368*b* of the said Act, as enacted by the Statutes of Ontario, 1978, chapter 17, section 2, is repealed. R.S.O. 1970, c. 284, s. 368*b*, repealed
- 17.** Sections 369 and 372 of the said Act are repealed. R.S.O. 1970, c. 284, ss. 369, 372, repealed
- 18.** Paragraph 10 of section 373 of the said Act, as re-enacted by the Statutes of Ontario, 1975, chapter 56, section 10, is repealed and the following substituted therefor: R.S.O. 1970, c. 284, s. 373, par. 10, re-enacted
10. For the exercise of the powers conferred upon the councils of local municipalities by paragraph 107 of subsection 1 of section 354 in respect of highways under the jurisdiction of the council. Regulating traffic
- 19.** Clauses *c*, *d* and *e* of section 375 of the said Act are repealed. R.S.O. 1970, c. 284, s. 375 (c-e), repealed
- 20.** Section 377 of the said Act, as amended by the Statutes of Ontario, 1974, chapter 136, section 17, is repealed. R.S.O. 1970, c. 284, s. 377, repealed
- 21.** Section 378 of the said Act is repealed. R.S.O. 1970, c. 284, s. 378, repealed
- 22.** Section 381 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 124, section 13 and 1974, chapter 136, section 18, is repealed. R.S.O. 1970, c. 284, s. 381, repealed
- 23.** Section 382 of the said Act is repealed. R.S.O. 1970, c. 284, s. 382, repealed
- 24.**—(1) Section 383 of the said Act, exclusive of the paragraphs, is repealed and the following substituted therefor: R.S.O. 1970, c. 284, s. 383, re-enacted

383. By-laws may be passed by the councils of local municipalities.

R.S.O. 1970,
c. 284, s. 383,
pars. 1-4,
repealed

(2) Paragraphs 1, 2, 3 and 4 of the said section 383 are repealed.

R.S.O. 1970,
c. 284, s. 383,
par. 5,
repealed

(3) Paragraph 5 of the said section 383, as amended by the Statutes of Ontario, 1972, chapter 1, section 1, is repealed.

R.S.O. 1970,
c. 284, s. 383,
par. 6,
repealed

(4) Paragraph 6 of the said section 383 is repealed.

R.S.O. 1970,
c. 284, s. 383,
par. 7,
re-enacted

(5) Paragraph 7 of the said section 383 is repealed and the following substituted therefor:

Exhibitions
of wax works,
shows, etc.

7. For prohibiting or regulating and licensing exhibitions of wax works, menageries, circus-riding, and other like shows usually exhibited by showmen, and for regulating and licensing roller skating rinks and other places of like amusement, and merry-go-rounds, switchback railways, carousels, and other like contrivances, and for fixing a fee to be paid for the licence, and for imposing penalties not exceeding the amount of the licence fee on offenders against the by-law, and for levying the same by distress and sale of the goods and chattels of the showman or proprietor, or belonging to or used in such exhibition or show whether owned or not owned by such showman or proprietor.

(a) A licence shall not be granted for any such exhibition or show to be held on the days of the exhibition of any district or township agricultural society, within 275 metres from the grounds of the society, or for any such exhibition or show in or in connection with which gambling is carried on or goods, wares or merchandise are sold or trafficked in.

(b) The fee to be paid for the licence shall not exceed \$500.

R.S.O. 1970,
c. 284, s. 383,
pars. 8-11,
repealed

(6) Paragraphs 8, 9, 10 and 11 of the said section 383 are repealed.

R.S.O. 1970,
c. 284, s. 383,
par. 12,
repealed

(7) Paragraph 12 of the said section 383, as amended by the Statutes of Ontario, 1972, chapter 1, section 1, is repealed.

R.S.O. 1970,
c. 284, s. 383,
pars. 13, 16,
repealed

(8) Paragraphs 13 and 18 of the said section 383 are repealed.

R.S.O. 1970,
c. 284,
s. 384 (2),
re-enacted

25. Subsection 2 of section 384 of the said Act is repealed and the following substituted therefor:

(2) By-laws may be passed by the councils of local municipalities for licensing and regulating special sales of goods and persons conducting such sales. Licensing and regulating special sales

26. Paragraphs 2 and 3 of section 385 of the said Act are repealed. R.S.O. 1970, c. 284, s. 385, pars. 2, 3, repealed

27. Sections 466*a*, 470*a* and 470*b* of the said Act, as enacted by the Statutes of Ontario, 1978, chapter 17, section 3, are repealed. R.S.O. 1970, c. 284, ss. 466*a*, 470*a*, 470*b*, repealed

28. Clauses *i*, *j* and *k* of subsection 1 and subsection 2 of section 487 of the said Act are repealed. R.S.O. 1970, c. 284, s. 487 (1) (*i*, *j*, *k*), (2), repealed

29. Section 640 of the said Act is repealed. R.S.O. 1970, c. 284, s. 640, repealed

30. The following are repealed: Repeals

1. *The Bread Sales Act*, being chapter 49 of the Revised Statutes of Ontario, 1970.

2. *The Public Halls Act*, being chapter 376 of the Revised Statutes of Ontario, 1970 and section 72 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.

3. Section 19 of *The Milk Act*, being chapter 273 of the Revised Statutes of Ontario, 1970.

31. This Act comes into force on the 1st day of January, 1979. Commencement

32. The short title of this Act is *The Municipal Licensing Act, 1978*. Short title



BILL 105

An Act to provide
for the Licensing of Businesses
by Municipalities

1st Reading

June 1st, 1978

2nd Reading

3rd Reading

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

((Government Bill))

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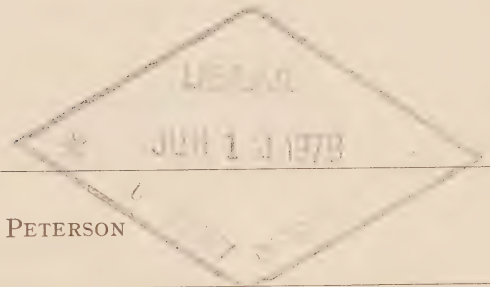
BILL 106

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act respecting the
Disclosure of Tax Incentive Costs**

MR. PETERSON



EXPLANATORY NOTE

The purpose of the Bill is to require the Treasurer of Ontario to disclose the actual costs to the public of every tax incentive program contained in the budget.

BILL 106

1978

An Act respecting the Disclosure of Tax Incentive Costs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Assembly" means the Legislative Assembly of Ontario;
- (b) "tax expenditure" means a tax deduction, exemption, rebate or other form of tax incentive that causes a reduction in the amount of revenue received by the Government of Ontario;
- (c) "Treasurer" means the Treasurer of Ontario.

2. The Treasurer shall cause to be prepared and shall lay before the Assembly on the same day that the budget statement is read a tax expenditure analysis indicating which of the budget proposals are tax expenditures and setting forth in respect of each tax expenditure,

Tax
expenditure
analysis

- (a) the projected loss of revenue created by the tax expenditure;
- (b) the anticipated effect of the tax expenditure on the economy of Ontario including a general description of the classes of persons, businesses and other economic sectors in Ontario that are likely to benefit from or be adversely affected thereby.

3. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

4. The short title of this Act is *The Tax Expenditures Disclosure Act, 1978*.

Short title

An Act respecting the
Disclosure of Tax Incentive Costs

1st Reading

June 1st, 1978

2nd Reading

3rd Reading

MR. PETERSON

(Private Member's Bill)

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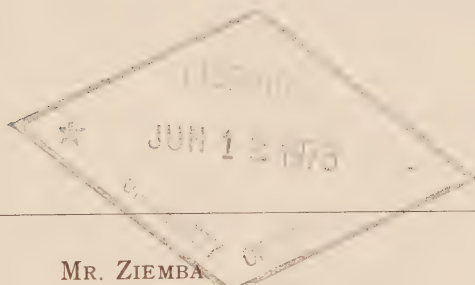
Government
Publications

BILL 107

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Labour Relations Act



MR. ZIEMBA

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of the Bill is to provide the Minister with authority to settle the terms of a first collective agreement between a trade union and an employer where the dispute settlement procedures in the Act have not been effective.

BILL 107

1978

An Act to amend The Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Labour Relations Act*, being chapter 232 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 34e,
enacted

34e. Where the parties have engaged in bargaining with a view to concluding their first collective agreement and the Minister is of the opinion that the dispute settlement procedures of this Act have not been effective and are not likely to be effective in enabling the parties to conclude an agreement, the Minister, upon the request of either party, may settle the terms and conditions of the first collective agreement and the terms and conditions shall be deemed to constitute the collective agreement between the parties and are binding upon them except to the extent that the parties agree in writing to vary any or all of those terms and conditions. First
collective
agreement

2. Subsection 1 of section 53 of the said Act is repealed and the following substituted therefor: s. 53 (1),
re-enacted

(1) Subject to subsection 3, where a trade union has not made a collective agreement within one year after its certification and the Minister has appointed a conciliation officer or a mediator under this Act or a party to collective bargaining has requested the Minister to settle the terms and conditions of a first collective agreement, no application for certification of a bargaining agent of, or for a declaration that a trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made until, Application
for certi-
fication
or termination
after
conciliation

- (a) thirty days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator; or

- (b) thirty days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board; or
- (c) six months have elapsed after the Minister has released to the parties a notice of a report of the conciliation officer that the differences between the parties concerning the terms of a collective agreement have been settled; or
- (d) six months have elapsed after the Minister has notified the parties of a refusal to settle the terms and conditions of a first collective agreement,

as the case may be.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is *The Labour Relations Amendment Act, 1978*.

An Act to amend
The Labour Relations Act

1st Reading

June 1st, 1978

2nd Reading

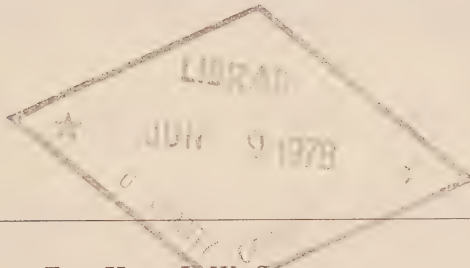
3rd Reading

MR. ZIEMBA

(Private Member's Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to acquire the Assets of
The Muskoka & Parry Sound Telephone Co., Limited**



THE HON. J. W. SNOW
Minister of Transportation and Communications

EXPLANATORY NOTE

The Act vests the title and control of The Muskoka & Parry Sound telephone system in The Ontario Telephone Development Corporation. When compensation cannot be agreed upon, provision is made for arbitration.

BILL 108

1978

An Act to acquire the Assets of The Muskoka & Parry Sound Telephone Co., Limited

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "Corporation" means The Ontario Telephone Development Corporation;

(b) "telephone system" means the assets and facilities of The Muskoka & Parry Sound Telephone Co., Limited comprising the Muskoka & Parry Sound telephone system, including any land, plant equipment, buildings, rights, franchises, list of subscribers and rates paid, easements and property of every kind, owned, held or used for the purpose of, or in connection with the construction, main-
tenance or operation of the said telephone system.

Telephone
system of
The Muskoka
& Parry
Sound
Telephone
Co., Limited
vest in
Ontario
Telephone
Development
Corporation

2.—(1) The said telephone system is hereby vested in the Corporation and the Corporation is hereby entitled to possession, management and control of the telephone system.

(2) Where resistance or opposition is made to the taking of possession, management or control of the telephone system, the Sheriff of the District of Parry Sound, upon the request of the Corporation, shall put down the resistance or opposition and shall put the Corporation into possession of the telephone system.

Sheriff
to give
possession

3.—(1) If agreement for compensation for the telephone system is not reached within thirty days from the date this Act comes into force, either party may serve notice of arbitration upon the other and upon the Land Compensation Board as constituted under *The Expropriations Act*

Notice of
arbitration

R.S.O. 1970,
c. 154

stating that it requires that the compensation payable be determined by arbitration.

Idem

(2) The notice of arbitration referred to in subsection 1 shall be deemed to be a notice under clause *b* of section 26 of *The Expropriations Act*, and, upon service of the notice, the practice and procedure under *The Expropriations Act* shall apply to the arbitration under this Act.

Application
of
R.S.O. 1970,
c. 154

4.—(1) Sections 29, 30, 31, 32, 33 and 34 of *The Expropriations Act* apply to the taking of the telephone system in the same manner as if it were land.

Idem

(2) Compensation for the telephone system is to be determined in accordance with sections 13, 14, 16, 17, subsection 2 of section 19 and section 20 of *The Expropriations Act* in the same manner as if it were land.

Interpre-
tation

(3) For the purposes of an arbitration under this Act, a reference to “expropriating authority” and to “statutory authority” in *The Expropriations Act* is a reference to the Corporation.

Compensa-
tion stands
in place
of assets

5. The compensation payable under this Act stands in place of the assets of The Muskoka & Parry Sound Telephone Co., Limited vested in the Corporation under section 1 and any claim to or encumbrance on the assets is deemed to be a claim to or an encumbrance on the compensation payable and not a claim or encumbrance on the assets.

Payment to
Minister

6. Upon compensation for the said telephone system being settled by agreement or under section 3, the Corporation shall pay \$50,000 to the Minister of Transportation and Communications to compensate the Minister for carrying out emergency repairs on the Muskoka & Parry Sound telephone system carried out before this Act came into force and the amount so paid shall be deducted from the compensation payable to The Muskoka & Parry Sound Telephone Co., Limited and shall have priority over any claim or encumbrance referred to in section 5.

Payment
into court

7.—(1) Subject to section 6, the compensation agreed upon or determined shall, without an order, be paid into the office of the Accountant of the Supreme Court together with a sum equal to six months interest thereon calculated at the annual rate of 6 per cent.

Application
to court

(2) Upon an application for payment out of court of compensation paid into court under subsection 1, a judge of the Supreme Court may direct that such notice of the appli-

cation be given by publication or otherwise to such persons as he considers proper and may direct the trial of an issue or make such order with respect to the payment out of court and with respect to costs as he considers reasonable.

(3) Where an order is obtained under subsection 2 in less than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the statutory authority. Distribution of interest

8. The provisions of *The Telephone Act* and *The Bulk Sales Act* do not apply to the transfer of assets provided for in this Act. R.S.O. 1970, cc. 457, 52 do not apply

9. This Act comes into force on the day it receives Royal Assent. Commencement

10. The short title of this Act is *The Muskoka & Parry Sound Telephone Co., Limited Acquisition Act, 1978*. Short title

An Act to acquire the Assets of The
Muskoka & Parry Sound Telephone
Co., Limited

1st Reading

June 2nd, 1978

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)

BILL 108

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to acquire the Assets of
The Muskoka & Parry Sound Telephone Co., Limited**

THE HON. J. W. SNOW
Minister of Transportation and Communications



TORONTO

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BILL 108

1978

An Act to acquire the Assets of The Muskoka & Parry Sound Telephone Co., Limited

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "Corporation" means The Ontario Telephone Development Corporation;

(b) "telephone system" means the assets and facilities of The Muskoka & Parry Sound Telephone Co., Limited comprising the Muskoka & Parry Sound telephone system, including any land, plant equipment, buildings, rights, franchises, list of subscribers and rates paid, easements and property of every kind, owned, held or used for the purpose of, or in connection with the construction, maintenance or operation of the said telephone system.

Telephone
system of
The Muskoka
& Parry
Sound
Telephone
Co., Limited
vest in
Ontario
Telephone
Development
Corporation

2.—(1) The said telephone system is hereby vested in the Corporation and the Corporation is hereby entitled to possession, management and control of the telephone system.

(2) Where resistance or opposition is made to the taking of possession, management or control of the telephone system, the Sheriff of the District of Parry Sound, upon the request of the Corporation, shall put down the resistance or opposition and shall put the Corporation into possession of the telephone system.

Sheriff
to give
possession

3.—(1) If agreement for compensation for the telephone system is not reached within thirty days from the date this Act comes into force, either party may serve notice of arbitration upon the other and upon the Land Compensation Board as constituted under *The Expropriations Act*

Notice of
arbitration

R.S.O. 1970.
c. 154

stating that it requires that the compensation payable be determined by arbitration.

Idem (2) The notice of arbitration referred to in subsection 1 shall be deemed to be a notice under clause *b* of section 26 of *The Expropriations Act*, and, upon service of the notice, the practice and procedure under *The Expropriations Act* shall apply to the arbitration under this Act.

Application of R.S.O. 1970, c. 154 4.—(1) Sections 29, 30, 31, 32, 33 and 34 of *The Expropriations Act* apply to the taking of the telephone system in the same manner as if it were land.

Idem (2) Compensation for the telephone system is to be determined in accordance with sections 13, 14, 16, 17, subsection 2 of section 19 and section 20 of *The Expropriations Act* in the same manner as if it were land.

Interpretation (3) For the purposes of an arbitration under this Act, a reference to “expropriating authority” and to “statutory authority” in *The Expropriations Act* is a reference to the Corporation.

Compensation stands in place of assets 5. The compensation payable under this Act stands in place of the assets of The Muskoka & Parry Sound Telephone Co., Limited vested in the Corporation under section 1 and any claim to or encumbrance on the assets is deemed to be a claim to or an encumbrance on the compensation payable and not a claim or encumbrance on the assets.

Payment to Minister 6. Upon compensation for the said telephone system being settled by agreement or under section 3, the Corporation shall pay \$50,000 to the Minister of Transportation and Communications to compensate the Minister for carrying out emergency repairs on the Muskoka & Parry Sound telephone system carried out before this Act came into force and the amount so paid shall be deducted from the compensation payable to The Muskoka & Parry Sound Telephone Co., Limited and shall have priority over any claim or encumbrance referred to in section 5.

Payment into court 7.—(1) Subject to section 6, the compensation agreed upon or determined shall, without an order, be paid into the office of the Accountant of the Supreme Court together with a sum equal to six months interest thereon calculated at the annual rate of 6 per cent.

Application to court (2) Upon an application for payment out of court of compensation paid into court under subsection 1, a judge of the Supreme Court may direct that such notice of the appli-

cation be given by publication or otherwise to such persons as he considers proper and may direct the trial of an issue or make such order with respect to the payment out of court and with respect to costs as he considers reasonable.

(3) Where an order is obtained under subsection 2 in less than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the statutory authority. Distribution of interest

8. The provisions of *The Telephone Act* and *The Bulk Sales Act* do not apply to the transfer of assets provided for in this Act. R.S.O. 1970, cc. 457, 52 do not apply

9. This Act comes into force on the day it receives Royal Assent. Commencement

10. The short title of this Act is *The Muskoka & Parry Sound Telephone Co., Limited Acquisition Act, 1978*. Short title

An Act to acquire the Assets of The
Muskoka & Parry Sound Telephone
Co., Limited

1st Reading

June 2nd, 1978

2nd Reading

June 13th, 1978

3rd Reading

June 13th, 1978

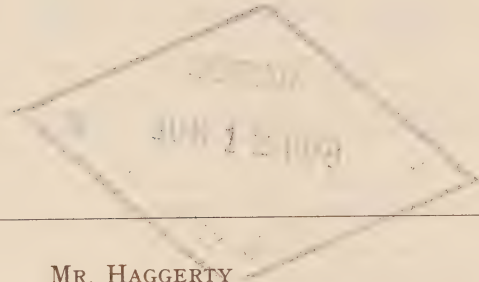
THE HON. J. W. SNOW
Minister of Transportation and
Communications

BILL 109

Private Member's Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Labour Relations Act**



MR. HAGGERTY

EXPLANATORY NOTE

The purpose of the Bill is to provide a mechanism whereby the Lieutenant Governor in Council can order a sixty-day suspension of a strike or lock-out and order a return to work where the strike or lock-out constitutes an immediate and serious danger to life, health or safety or seriously disrupts the economy of the province or any area of the province.

The Bill provides that the Minister of Labour must appoint a conciliation officer where an order suspending a strike or lock-out has been made and may subsequently appoint a conciliation board where the efforts of the conciliation officer to effect a collective agreement are unsuccessful.

If conciliation efforts are unsuccessful, the strike or lock-out may be resumed without a further strike vote.

An order made under the Bill would be enforceable as an order of the Supreme Court.

BILL 109

1978

An Act to amend The Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 16 of *The Labour Relations Act*, being chapter 232 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

(3) This section does not apply where an order has been made under subsection 1 of section 47a.

2. The said Act is amended by adding thereto the following section:

SUSPENSION OF STRIKES OR LOCK-OUTS

47a.—(1) Where during a strike or lock-out the Lieutenant Governor in Council is of the opinion that the strike or lock-out,

- (a) constitutes an immediate and serious danger to life, health or safety; or

- (b) seriously disrupts the economy of the Province or any area of the Province,

the Lieutenant Governor in Council may,

- (c) order a suspension of the strike or lock-out and order a return to work for a period not exceeding sixty days in length, commencing on the day next following the date of the order; or
- (d) designate, by order, those facilities and services that the Lieutenant Governor in Council considers necessary or essential to prevent immediate and

s. 16,
amended

Application

s. 47a,
enacted

Lieutenant
Governor
in Council
may by order
suspend a
strike or
lock-out
and order
a return
to work

serious danger to life, health or safety and the Lieutenant Governor in Council may order the suspension of the strike or lock-out and order a return to work with respect to the facilities and services so designated for a period not exceeding sixty days in length, commencing on the day next following the date of the order.

Appointment
of conciliation
officer and
conciliation
board

(2) Where an order is made under clause *c* or *d* of subsection 1, the Minister shall appoint a conciliation officer and may subsequently appoint a conciliation board and sections 17 to 31 apply *mutatis mutandis* to such appointments.

Resumption
of strike
or lock-out

(3) Notwithstanding subsection 1, where the Minister gives a notice to the parties under clause *b* of section 18 or where a conciliation board report released under subsection 5 of section 31 indicates that the parties are unable to effect a collective agreement, the parties may immediately resume the strike or lock-out without taking a new strike vote on the date such notice is given or such report is released.

Enforcement
of orders

(4) The Minister may file in the office of the Registrar of the Supreme Court a copy of an order made under subsection 1, in the prescribed form, whereupon the order shall be entered in the same way as a judgment or order of that court and is enforceable by the Minister or by a trade union or employer affected as a judgment or order of that court.

Limitation
on orders

(5) The Lieutenant Governor in Council shall not make an order under subsection 1 more than once in respect of the same dispute.

R.S.O. 1970,
c. 410,
does not apply

(6) *The Regulations Act* does not apply to an order made under subsection 1.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is *The Labour Relations Amendment Act, 1978*.

An Act to amend
The Labour Relations Act

1st Reading

June 2nd, 1978

2nd Reading

3rd Reading

MR. HAGGERTY

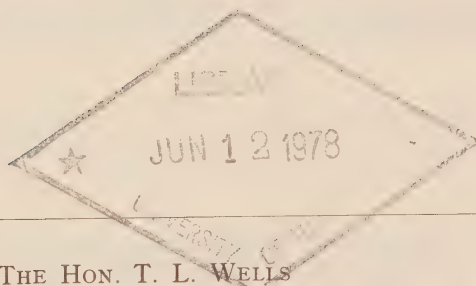
(Private Member's Bill)

BILL 110

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Education Act, 1974



THE HON. T. L. WELLS
Minister of Education

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

The Bill consists of amendments to *The Education Act, 1974* made necessary by the holding of regular school board elections in 1978. Most of the amendments contained in the Bill are complementary to *The Municipal Elections Act, 1977*. Since that Act provides for earlier municipal elections and for municipal councils and local boards to commence their term of office on the 1st day of December in an election year, many of the amendments are concerned with changes in dates to conform to these provisions.

SECTION 1. The amendment clarifies that a city cannot be a county municipality.

SECTION 2. The amendments to subsections 7 and 12 of section 57 permit the Ontario Municipal Board to make changes affecting the boundaries of school divisions or of cities within a school division effective on the 1st day of December or some other date preceding the 1st day of January. The new subsections 9a and 13a clarify the responsibilities of municipal clerks where determinations are made under the section. The amendment to subsection 22 advances the date for the passing of a by-law dividing a municipality into electoral areas for school board purposes. The re-enactment of subsection 31 provides that new municipal boundaries will apply to a school board election where the new boundaries are to become effective on or before the 1st day of January next following the election.

BILL 110

1978

An Act to amend The Education Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Paragraph 10 of subsection 1 of section 1 of *The Education Act, 1974*, being chapter 109, is repealed and the following substituted therefor:

s. 1 (1),
par. 10,
re-enacted

 10. "county municipality" means a municipality, other than a city, that forms part of a county or regional municipality that is not in the territorial districts.
- 2.—(1) Subclauses ii and iii of clause *a* of subsection 7 of section 57 of the said Act are repealed and the following substituted therefor:

s. 57 (7) (a) (ii),
re-enacted;
s. 57 (7) (a)
(iii),
repealed

 - (ii) the boundaries of the school division have been altered subsequent to the latest determination or are to be altered effective on or before the 1st day of January next following the election.
- (2) Subclause ii of clause *b* of subsection 7 of the said section 57 is amended by striking out "the 1st day of January of the year" in the third and fourth lines and inserting in lieu thereof "or before the 1st day of January".

s. 57 (7) (b)
(ii),
amended
- (3) Subsection 9 of the said section 57 is amended by inserting after "effective" in the thirty-second line "on or before".

s. 57 (9),
amended
- (4) The said section 57, as amended by the Statutes of Ontario, 1976, chapter 50, section 9, is further amended by adding thereto the following subsection:

s. 57,
amended

(9a) Where a determination is made under subsection 9 in respect of a school division that is entirely in a regional municipality, the clerk of the county municipality having

Notice of
determina-
tion of
regional
municipality

the greatest equalized residential and farm assessment for public school purposes in the school division shall send forthwith to the clerk of the regional municipality a copy of the determination.

s. 57 (12) (b),
amended

- (5) Clause *b* of subsection 12 of the said section 57 is amended by inserting after "effective" in the fourth line "on or before".

s. 57 (12) (c),
amended

- (6) Clause *c* of subsection 12 of the said section 57 is amended by inserting after "effective" in the second line "on or before".

s. 57,
amended

- (7) The said section 57 is further amended by adding thereto the following subsection:

Notice of
determina-
tion to
clerk

- (13a) Where a determination is made under subsection 13 in respect of a school division entirely in a regional municipality, the clerk who referred the matter to the judge shall, upon receipt of the determination of the judge, send a copy thereof to the clerk of the regional municipality.

s. 57 (22),
amended

- (8) Subsection 22 of the said section 57 is amended by striking out "October" in the third line and inserting in lieu thereof "September".

s. 57 (31),
re-enacted

- (9) Subsection 31 of the said section 57 is repealed and the following substituted therefor:

Effect of
boundary
change on
elections

- (31) Where the boundaries of a school division or of one or more municipalities in a school division are to be altered effective on or before the 1st day of January next following an election of members of the board of the school division, such boundaries shall be deemed to have been so altered for all purposes relating to such election except for the purpose of determining the persons responsible for performing duties in connection with the election.

s. 62,
amended

- 3.** Section 62 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 50, section 11, is further amended by adding thereto the following subsection:

Term of
office

- (6) The term of office of members of the board of a district school area that is not an improvement district who are elected in the year 1978 and in regular elections thereafter shall commence on the 1st day of December in the election year.

SECTION 3. The amendment to section 62 fixes a new date for the commencement of the term of office of a member of a district school area board.

SECTION 4. The amendment to subsection 1 of section 63 makes the election date in a district school area where the board is not elected under *The Municipal Elections Act, 1977* the same as it would be if the election were conducted under *The Municipal Elections Act, 1977*.

SECTION 5. The amendment to subsection 3 of section 64 clarifies that the responsibility of the secretary of a district school area board in the case of an election conducted under *The Municipal Elections Act, 1977* is restricted to that portion of the district school area that is not within an organized municipality.

SECTION 6. The amendment to subsection 2 of section 89 makes the date of discontinuance of a separate school board the same as the date on which the term of office of the members of the board will expire under *The Municipal Elections Act, 1977*.

SECTION 7. The amendment to section 97 fixes a new date for the commencement of the term of office of a member of a rural separate school board.

SECTION 8. The new subsection 1a provides for the meeting to elect trustees to a rural separate school board to be held on the same day as municipal elections are conducted under *The Municipal Elections Act, 1977*. This election meeting is to be held separately from the annual meeting of supporters. The other amendments to section 100 are complementary to the new subsection 1a.

4. Subsection 1 of section 63 of the said Act is amended by striking ^{s. 63 (1),} amended out "first Monday in December" in the third line and inserting in lieu thereof "second Monday in November or, where that day is Remembrance Day, on the next succeeding day".
5. Subsection 3 of section 64 of the said Act is amended by inserting after "officer" in the twelfth line "in respect of the ^{s. 64 (3),} amended improvement district or territory without municipal organization".
6. Subsection 2 of section 89 of the said Act is amended by ^{s. 89 (2),} amended striking out "31st day of December" in the first and second lines and inserting in lieu thereof "30th day of November".
7. Section 97 of the said Act is amended by adding thereto the ^{s. 97,} amended following subsection:

(1a) The term of office of trustees of a rural separate ^{Term of} school board elected in the year 1978 and in regular elections thereafter shall commence on the 1st day of December in the election year. ^{office}

- 8.—(1) Subsection 1 of section 100 of the said Act is amended ^{s. 100 (1),} amended by striking out "A meeting of the supporters of a rural separate school for the purpose of electing trustees and for any other school purpose shall be held annually" in the first, second and third lines and inserting in lieu thereof "An annual meeting of the supporters of a rural separate school shall be held".
- (2) The said section 100 is amended by adding thereto the ^{s. 100,} amended following subsection:

(1a) A rural separate school board shall be elected at a ^{Election} meeting of the separate school supporters held on the second ^{of} Monday in November or, where that day is Remembrance Day, on the next succeeding day, in the year of a municipal election at a time and place selected by the board. ^{board}

- (3) Subsection 3 of the said section 100 is amended by striking ^{s. 100 (3),} amended out "the" where it occurs the third time in the first line and inserting in lieu thereof "a".
- (4) Subsection 4 of the said section 100 is amended by insert- ^{s. 100 (4),} amended ing after "the" where it occurs the second time in the first line "annual".
- (5) Subsection 12 of the said section 100 is amended by ^{s. 100 (12),} amended striking out "an annual or special meeting" in the second

line and inserting in lieu thereof "a meeting of the supporters of a rural separate school".

s. 100 (14),
amended

- (6) Subsection 14 of the said section 100 is amended by striking out "the meeting" in the first line and inserting in lieu thereof "a meeting for the election of one or more trustees".

s. 100a,
enacted

9. The said Act is amended by adding thereto the following section:

Where
municipality
may conduct
election

100a. Notwithstanding section 100, where the centre of a rural separate school zone is in a municipality, the board of the rural separate school may, by resolution passed before the 1st day of July in the year of an election and approved at a meeting of the supporters of the rural separate school, determine that the election of trustees of the board shall be conducted by the municipality under *The Municipal Elections Act, 1977*, and the trustees shall be elected by general vote of the separate school electors of the separate school zone.

1977, c. 62

s. 100b,
enacted

10. The said Act is further amended by adding thereto the following section:

Returning
officer

100b. Where territory without municipal organization is,

- (a) within a rural or an urban separate school zone whose centre is in a municipality; or
- (b) within a combined separate school zone, a centre of which is in a municipality,

and the election of trustees of the board for such zone is conducted under *The Municipal Elections Act, 1977*, the secretary of the board shall be the returning officer and shall perform all the duties of a municipal clerk in the election for the territory without municipal organization and he shall report forthwith the vote recorded in the territory to the returning officer for the municipality in which the centre of the zone is situated and the returning officer shall prepare the final summary and announce the result of the vote.

s. 101 (1),
amended

- 11.—(1) Subsection 1 of section 101 of the said Act is amended by striking out "January" in the fourth line and inserting in lieu thereof "December".

s. 101 (3),
amended

- (2) Subsection 3 of the said section 101 is amended by striking out "December" in the fourth line and inserting in lieu thereof "September".

SECTION 9. The new section 100*a* permits a rural separate school board to have its election conducted by a municipality where the centre of the separate school zone is in the municipality.

SECTION 10. The new section 100*b* requires the secretary of a separate school board, except a district combined Roman Catholic separate school board, to act as a returning officer for elections conducted under *The Municipal Elections Act, 1977* in relation to that part of the separate school zone that consists of territory without municipal organization.

SECTION 11. The amendment to subsection 1 of section 101 provides that the trustees of a board of a combined separate school zone take office on the 1st day of December. The amendment to subsection 3 advances the date by which members must be appointed to a committee to arrange for the first election of trustees to a combined separate school board.

SECTION 12. The amendment to subsection 6 of section 110 permits determinations of the number of trustees to be elected by separate school electors in a county or district combined separate school zone where municipal boundaries have been altered or new cities erected effective on or before the 1st day of January. The amendment to subsection 20 of section 110 advances the final date for the passing of a by-law dividing a municipality into electoral areas for the purpose of electing members of a county or district combined separate school board.

SECTION 13. The re-enactment of section 111 is complementary to the amendments to section 110 and subsection 31 of section 57.

SECTION 14. The provision is repealed because it is no longer necessary by reason of the amendment to subsection 4 of section 194.

SECTION 15. The amendment to subsection 4 of section 175 advances the date by which the teachers are to submit to the board the names of their appointees to the school board advisory committee and subsection 5 advances the date by which the members of the committee are to be appointed.

SECTION 16. The amendment to section 176 advances the last date by which the first meeting of the school board advisory committee in each year is to be held.

SECTION 17. The re-enacted subsection 2 of section 180 changes the date of the first meeting of a board and is complementary to the change in the commencement of the term of office of the members. The amendments to subsections 4 and 5 of section 180 are complementary.

- 12.**—(1) Clause *a* of subsection 6 of section 110 of the said Act <sup>s. 110 (6) (a),
amended</sup> is amended by inserting after “effective” in the sixth line “on or before”.
- (2) Subclause ii of clause *b* of subsection 6 of the said section <sup>s. 110 (6) (b) (ii),
amended</sup> 110 is amended by striking out “the 1st day of January of the year” in the fourth and fifth lines and inserting in lieu thereof “on or before the 1st day of January”.
- (3) Subsection 20 of the said section 110 is amended by <sup>s. 110 (20),
amended</sup> striking out “October” in the third line and inserting in lieu thereof “September”.

- 13.** Section 111 of the said Act is repealed and the following <sup>s. 111,
re-enacted</sup> substituted therefor:

111. Where the boundaries of an area designated by the <sup>Effect of
boundary
change on
elections</sup> regulations under subsection 2 of section 103 in respect of a county or district combined separate school board or the boundaries of one or more municipalities in such area are to be altered effective on or before the 1st day of January next following an election of trustees of the board, such boundaries shall be deemed to have been altered for all purposes relating to such election except for the purpose of determining the persons responsible for performing duties in connection with the election.

- 14.** Subsection 5 of section 112 of the said Act is repealed. <sup>s. 112 (5),
repealed</sup>

- 15.**—(1) Subsection 4 of section 175 of the said Act is amended <sup>s. 175 (4),
amended</sup> by striking out “January” in the second line and inserting in lieu thereof “December”.

- (2) Subsection 5 of the said section 175 is amended by striking <sup>s. 175 (5),
amended</sup> out “January” in the second line and inserting in lieu thereof “December”.

- 16.** Subsection 1 of section 176 of the said Act is amended by <sup>s. 176 (1),
amended</sup> striking out “28th day of February” in the second and third lines and inserting in lieu thereof “31st day of January”.

- 17.**—(1) Subsection 2 of section 180 of the said Act is repealed and <sup>s. 180 (2),
re-enacted</sup> the following substituted therefor:

(2) A board that is elected at a regular election under *The Municipal Elections Act, 1977* and a board that is appointed or elected other than at a regular election under *The Municipal Elections Act, 1977* shall hold its first meeting not later than seven days after the day on which the term of office of the board commences on such date and at such time and <sup>First
meeting
1977, c. 62</sup>

place as the board determines and, failing such determination, at 8 p.m. at the head office of the board on the first Wednesday following the commencement of the term of office.

s. 180 (4),
amended

- (2) Subsection 4 of the said section 180 is amended by inserting after “in” in the first line “December of”.

s. 180 (5),
amended

- (3) Subsection 5 of the said section 180 is amended by inserting after “in” in the first line “December of”.

s. 190 (4),
amended

- 18.—**(1) Subsection 4 of section 190 of the said Act is amended by striking out “105 to 108 and 112 of *The Municipal Elections Act, 1972*” in the first and second lines and inserting in lieu thereof “107 to 110 and 114 of *The Municipal Elections Act, 1977*”.

s. 190 (5),
amended

- (2) Subsection 5 of the said section 190 is amended by striking out “104 of *The Municipal Elections Act, 1972*” in the second and third lines and inserting in lieu thereof “106 of *The Municipal Elections Act, 1977*”.

s. 193 (4),
amended

- 19.** Subsection 4 of section 193 of the said Act is amended by striking out “31st day of December” in the sixth and seventh lines and inserting in lieu thereof “30th day of November”.

s. 194 (4),
re-enacted

- 20.** Subsection 4 of section 194 of the said Act is repealed and the following substituted therefor:

Where
election held
to fill a
vacancy
1977, c. 62

(4) Notwithstanding subsections 1 to 3 and section 196, where the elections of a board are held under *The Municipal Elections Act, 1977*, and a vacancy occurs on the board on or before the 31st day of March of an election year, the board may, by resolution, require that an election be held to fill the vacancy, in which case the secretary of the board shall forthwith send to the clerk of the appropriate municipality a certified copy of the resolution, and the provisions of that Act that pertain to an election to fill a vacancy apply.

s. 199,
amended

- 21.** Section 199 of the said Act is amended by striking out “except a board composed of only three members” in the second line and inserting in lieu thereof “that is composed of more than three members and whose elections are not conducted under *The Municipal Elections Act, 1977*”.

s. 256 (8),
amended

- 22.** Subsection 8 of the said section 256 is amended by striking out “December” in the fifth line and inserting in lieu thereof “November”.

s. 257,
amended

- 23.** Section 257 of the said Act is amended by striking out “on or before the second Wednesday” in the fourth line and inserting in lieu thereof “not later than ten days”.

SECTION 18. The amendments revise references to *The Municipal Elections Act, 1972* to refer to the corresponding sections of *The Municipal Elections Act, 1977*.

SECTION 19. The amendment to subsection 4 of section 193 advances the date upon which the resignation filed by a member of a board to become a candidate for some other office takes effect.

SECTION 20. The amendment to subsection 4 of section 194 changes the requirements relating to elections to fill a vacancy on a board to conform with the provisions of *The Municipal Elections Act, 1977*. The amendment also clarifies that this subsection applies also to separate school boards.

SECTION 21. The amendment to section 199 clarifies that this section applies only to a board whose elections are not conducted under *The Municipal Elections Act, 1977*.

SECTION 22. The amendment to section 256 advances the final date for the making of apportionments for French language advisory committees.

SECTION 23. The amendment to section 257 requires that the meeting at which members of the French language advisory committee are elected be held within ten days after the first meeting of the board.

- 24.** The terms of office of the members of a district school area board and of the trustees of a rural separate school board that, but for this Act, would expire in December of 1978, shall expire with the 30th day of November, 1978. Expiration of term of office
- 25.** The said Act is further amended by striking out "*The Municipal Elections Act, 1972*" wherever it occurs and inserting in lieu thereof in each instance "*The Municipal Elections Act, 1977*". Act amended
- 26.** This Act comes into force on the day it receives Royal Assent. Commencement
- 27.** The short title of this Act is *The Education Amendment Act, 1978*. Short title

An Act to amend
The Education Act, 1974

1st Reading

June 6th, 1978

2nd Reading

3rd Reading

THE HON. T. L. WELLS
Minister of Education

(Government Bill)

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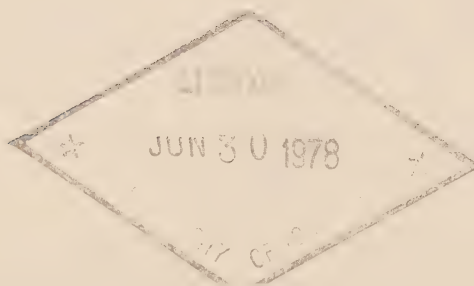
3⁸ BILL 110

Government
Publications

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Education Act, 1974

THE HON. T. L. WELLS
Minister of Education





BILL 110

1978

An Act to amend The Education Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Paragraph 10 of subsection 1 of section 1 of *The Education Act, 1974*, being chapter 109, is repealed and the following substituted therefor:

s. 1 (1),
par. 10,
re-enacted

 10. "county municipality" means a municipality, other than a city, that forms part of a county or regional municipality that is not in the territorial districts.
- 2.—(1) Subclauses ii and iii of clause *a* of subsection 7 of section 57 of the said Act are repealed and the following substituted therefor:

s. 57 (7) (a) (ii),
re-enacted;
s. 57 (7) (a)
(iii),
repealed

 - (ii) the boundaries of the school division have been altered subsequent to the latest determination or are to be altered effective on or before the 1st day of January next following the election.
- (2) Subclause ii of clause *b* of subsection 7 of the said section 57 is amended by striking out "the 1st day of January of the year" in the third and fourth lines and inserting in lieu thereof "or before the 1st day of January".

s. 57 (7) (b)
(ii),
amended
- (3) Subsection 9 of the said section 57 is amended by inserting after "effective" in the thirty-second line "on or before".

s. 57 (9),
amended
- (4) The said section 57, as amended by the Statutes of Ontario, 1976, chapter 50, section 9, is further amended by adding thereto the following subsection:

(9a) Where a determination is made under subsection 9 in respect of a school division that is entirely in a regional municipality, the clerk of the county municipality having

Notice of
determina-
tion of
regional
municipality

the greatest equalized residential and farm assessment for public school purposes in the school division shall send forthwith to the clerk of the regional municipality a copy of the determination.

s. 57 (12) (b),
amended

- (5) Clause *b* of subsection 12 of the said section 57 is amended by inserting after “effective” in the fourth line “on or before”.

s. 57 (12) (c),
amended

- (6) Clause *c* of subsection 12 of the said section 57 is amended by inserting after “effective” in the second line “on or before”.

s. 57,
amended

- (7) The said section 57 is further amended by adding thereto the following subsection:

Notice of
determina-
tion to
clerk

- (13*a*) Where a determination is made under subsection 13 in respect of a school division entirely in a regional municipality, the clerk who referred the matter to the judge shall, upon receipt of the determination of the judge, send a copy thereof to the clerk of the regional municipality.

s. 57 (22),
amended

- (8) Subsection 22 of the said section 57 is amended by striking out “October” in the third line and inserting in lieu thereof “September”.

s. 57 (31),
re-enacted

- (9) Subsection 31 of the said section 57 is repealed and the following substituted therefor:

Effect of
boundary
change on
elections

- (31) Where the boundaries of a school division or of one or more municipalities in a school division are to be altered effective on or before the 1st day of January next following an election of members of the board of the school division, such boundaries shall be deemed to have been so altered for all purposes relating to such election except for the purpose of determining the persons responsible for performing duties in connection with the election.

s. 62,
amended

- 3.** Section 62 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 50, section 11, is further amended by adding thereto the following subsection:

Term of
office

- (6) The term of office of members of the board of a district school area that is not an improvement district who are elected in the year 1978 and in regular elections thereafter shall commence on the 1st day of December in the election year.

4. Subsection 1 of section 63 of the said Act is amended by striking out "first Monday in December" in the third line and inserting in lieu thereof "second Monday in November or, where that day is Remembrance Day, on the next succeeding day". s. 63 (1),
amended
5. Subsection 3 of section 64 of the said Act is amended by inserting after "officer" in the twelfth line "in respect of the improvement district or territory without municipal organization". s. 64 (3),
amended
6. Subsection 2 of section 89 of the said Act is amended by striking out "31st day of December" in the first and second lines and inserting in lieu thereof "30th day of November". s. 89 (2),
amended
7. Section 97 of the said Act is amended by adding thereto the following subsection: s. 97,
amended

(1a) The term of office of trustees of a rural separate school board elected in the year 1978 and in regular elections thereafter shall commence on the 1st day of December in the election year. Term of
office

- 8.—(1) Subsection 1 of section 100 of the said Act is amended by striking out "A meeting of the supporters of a rural separate school for the purpose of electing trustees and for any other school purpose shall be held annually" in the first, second and third lines and inserting in lieu thereof "An annual meeting of the supporters of a rural separate school shall be held". s. 100 (1),
amended
- (2) The said section 100 is amended by adding thereto the following subsection: s. 100,
amended

(1a) A rural separate school board shall be elected at a meeting of the separate school supporters held on the second Monday in November or, where that day is Remembrance Day, on the next succeeding day, in the year of a municipal election at a time and place selected by the board. Election
of
board
- (3) Subsection 3 of the said section 100 is amended by striking out "the" where it occurs the third time in the first line and inserting in lieu thereof "a". s. 100 (3),
amended
- (4) Subsection 4 of the said section 100 is amended by inserting after "the" where it occurs the second time in the first line "annual". s. 100 (4),
amended
- (5) Subsection 12 of the said section 100 is amended by striking out "an annual or special meeting" in the second s. 100 (12),
amended

line and inserting in lieu thereof “a meeting of the supporters of a rural separate school”.

s. 100 (14),
amended

- (6) Subsection 14 of the said section 100 is amended by striking out “the meeting” in the first line and inserting in lieu thereof “a meeting for the election of one or more trustees”.

s. 100a,
enacted

9. The said Act is amended by adding thereto the following section:

Where
municipality
may conduct
election

100a. Notwithstanding section 100, where the centre of a rural separate school zone is in a municipality, the board of the rural separate school may, by resolution passed before the 1st day of July in the year of an election and approved at a meeting of the supporters of the rural separate school, determine that the election of trustees of the board shall be conducted by the municipality under *The Municipal Elections Act, 1977*, and the trustees shall be elected by general vote of the separate school electors of the separate school zone.

1977, c. 62

s. 100b,
enacted

10. The said Act is further amended by adding thereto the following section:

Returning
officer

100b. Where territory without municipal organization is,

- (a) within a rural or an urban separate school zone whose centre is in a municipality; or
- (b) within a combined separate school zone, a centre of which is in a municipality,

and the election of trustees of the board for such zone is conducted under *The Municipal Elections Act, 1977*, the secretary of the board shall be the returning officer and shall perform all the duties of a municipal clerk in the election for the territory without municipal organization and he shall report forthwith the vote recorded in the territory to the returning officer for the municipality in which the centre of the zone is situated and the returning officer shall prepare the final summary and announce the result of the vote.

s. 101 (1),
amended

- 11.—(1) Subsection 1 of section 101 of the said Act is amended by striking out “January” in the fourth line and inserting in lieu thereof “December”.

s. 101 (3),
amended

- (2) Subsection 3 of the said section 101 is amended by striking out “December” in the fourth line and inserting in lieu thereof “September”.

- 12.**—(1) Clause *a* of subsection 6 of section 110 of the said Act is amended by inserting after “effective” in the sixth line “on or before”. s. 110 (6) (a), amended
- (2) Subclause ii of clause *b* of subsection 6 of the said section 110 is amended by striking out “the 1st day of January of the year” in the fourth and fifth lines and inserting in lieu thereof “on or before the 1st day of January”. s. 110 (6) (b) (ii), amended
- (3) Subsection 20 of the said section 110 is amended by striking out “October” in the third line and inserting in lieu thereof “September”. s. 110 (20), amended
- 13.** Section 111 of the said Act is repealed and the following substituted therefor: s. 111, re-enacted
111. Where the boundaries of an area designated by the regulations under subsection 2 of section 103 in respect of a county or district combined separate school board or the boundaries of one or more municipalities in such area are to be altered effective on or before the 1st day of January next following an election of trustees of the board, such boundaries shall be deemed to have been altered for all purposes relating to such election except for the purpose of determining the persons responsible for performing duties in connection with the election. Effect of boundary change on elections
- 14.** Subsection 5 of section 112 of the said Act is repealed. s. 112 (5), repealed
- 15.**—(1) Subsection 4 of section 175 of the said Act is amended by striking out “January” in the second line and inserting in lieu thereof “December”. s. 175 (4), amended
- (2) Subsection 5 of the said section 175 is amended by striking out “January” in the second line and inserting in lieu thereof “December”. s. 175 (5), amended
- 16.** Subsection 1 of section 176 of the said Act is amended by striking out “28th day of February” in the second and third lines and inserting in lieu thereof “31st day of January”. s. 176 (1), amended
- 17.**—(1) Subsection 2 of section 180 of the said Act is repealed and the following substituted therefor: s. 180 (2), re-enacted
- (2) A board that is elected at a regular election under *The Municipal Elections Act, 1977* and a board that is appointed or elected other than at a regular election under *The Municipal Elections Act, 1977* shall hold its first meeting not later than seven days after the day on which the term of office of the board commences on such date and at such time and First meeting 1977, c. 62

place as the board determines and, failing such determination, at 8 p.m. at the head office of the board on the first Wednesday following the commencement of the term of office.

s. 180 (4),
amended

- (2) Subsection 4 of the said section 180 is amended by inserting after “in” in the first line “December of”.

s. 180 (5),
amended

- (3) Subsection 5 of the said section 180 is amended by inserting after “in” in the first line “December of”.

s. 190 (4),
amended

- 18.—**(1) Subsection 4 of section 190 of the said Act is amended by striking out “105 to 108 and 112 of *The Municipal Elections Act, 1972*” in the first and second lines and inserting in lieu thereof “107 to 110 and 114 of *The Municipal Elections Act, 1977*”.

s. 190 (5),
amended

- (2) Subsection 5 of the said section 190 is amended by striking out “104 of *The Municipal Elections Act, 1972*” in the second and third lines and inserting in lieu thereof “106 of *The Municipal Elections Act, 1977*”.

s. 193 (4),
amended

- 19.** Subsection 4 of section 193 of the said Act is amended by striking out “31st day of December” in the sixth and seventh lines and inserting in lieu thereof “30th day of November”.

s. 194 (4),
re-enacted

- 20.** Subsection 4 of section 194 of the said Act is repealed and the following substituted therefor:

Where
election held
to fill a
vacancy
1977, c. 62

(4) Notwithstanding subsections 1 to 3 and section 196, where the elections of a board are held under *The Municipal Elections Act, 1977*, and a vacancy occurs on the board on or before the 31st day of March of an election year, the board may, by resolution, require that an election be held to fill the vacancy, in which case the secretary of the board shall forthwith send to the clerk of the appropriate municipality a certified copy of the resolution, and the provisions of that Act that pertain to an election to fill a vacancy apply.

s. 199,
amended

- 21.** Section 199 of the said Act is amended by striking out “except a board composed of only three members” in the second line and inserting in lieu thereof “that is composed of more than three members and whose elections are not conducted under *The Municipal Elections Act, 1977*”.

s. 256 (8),
amended

- 22.** Subsection 8 of the said section 256 is amended by striking out “December” in the fifth line and inserting in lieu thereof “November”.

s. 257,
amended

- 23.** Section 257 of the said Act is amended by striking out “on or before the second Wednesday” in the fourth line and inserting in lieu thereof “not later than ten days”.

- 24.** The terms of office of the members of a district school area board and of the trustees of a rural separate school board that, but for this Act, would expire in December of 1978, shall expire with the 30th day of November, 1978. Expiration of term of office
- 25.** The said Act is further amended by striking out "*The Municipal Elections Act, 1972*" wherever it occurs and inserting in lieu thereof in each instance "*The Municipal Elections Act, 1977*". Act amended
- 26.** This Act comes into force on the day it receives Royal Assent. Commencement
- 27.** The short title of this Act is *The Education Amendment Act, 1978*. Short title

An Act to amend
The Education Act, 1974

1st Reading

June 6th, 1978

2nd Reading

June 16th, 1978

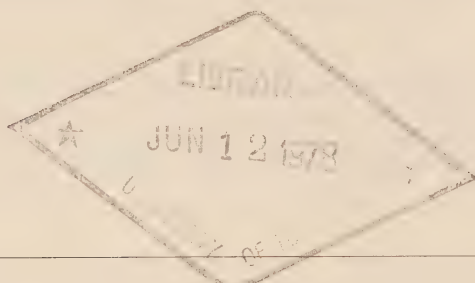
3rd Reading

June 16th, 1978

THE HON. T. L. WELLS
Minister of Education

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Municipality of Metropolitan Toronto Act**



THE HON. T. L. WELLS
Minister of Education

TORONTO

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EXPLANATORY NOTES

SECTION 1. Section 119 of the Act is amended by deleting references to enactments that have been repealed and inserting instead the applicable reference to *The Education Act, 1974*. Subsection 1a governing the appointment of auditors is no longer required since subsection 2 of section 203 of *The Education Act, 1974* requires every board to appoint a licensed auditor.

SECTION 2. The amendment to section 120 of the Act is complementary to *The Municipal Elections Act, 1977*. The date for the first meeting of a board of education is advanced to conform to the new commencement date of December 1st for the term of office of the board.

BILL 111

1978

An Act to amend The Municipality of Metropolitan Toronto Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 119 of *The Municipality of Metropolitan Toronto Act*, being chapter 295 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1972, chapter 54, section 3, is repealed and the following substituted therefor: s. 119 (1),
re-enacted

(1) The provisions of *The Education Act, 1974* and the regulations that are not inconsistent with this Act apply to the boards of education referred to in subsection 1 of section 118, and, so far as such provisions are inconsistent with this Act, they do not apply to such boards of education. Application
of 1974,
c. 109

- (2) Subsection 1a of the said section 119, as enacted by the Statutes of Ontario, 1972, chapter 54, section 3, is repealed. s. 119 (1a),
repealed

- (3) Subsection 3 of the said section 119 is amended by striking out “section 71 of *The Schools Administration Act*” in the second line and inserting in lieu thereof “section 210 of *The Education Act, 1974*”. s. 119 (3),
amended

- (4) Subsection 4 of the said section 119 is amended by striking out “Part VI of *The Schools Administration Act*” in the second and third lines and inserting in lieu thereof “Part X of *The Education Act, 1974*”. s. 119 (4),
amended

2. Section 120 of the said Act is repealed and the following substituted therefor: s. 120,
re-enacted

120. The first meeting of each such board of education after a regular election shall be held not later than the seventh day following the day on which the terms of office First
meeting

of the elected members commence at such place and time as the board may determine.

s. 122 (1).
re-enacted

- 3.** Subsection 1 of section 122 of the said Act is repealed and the following substituted therefor:

First
meeting
of
School
Board

(1) The first meeting of the School Board after a regular election shall be held after the boards of education for the area municipalities have held their first meetings, but in any event, not later than the fourteenth day following the day on which the terms of office of the members of such boards of education commence, at such place and time as may be fixed by resolution of the School Board.

Commence-
ment

- 4.** This Act comes into force on the day it receives Royal Assent.

Short title

- 5.** The short title of this Act is *The Municipality of Metropolitan Toronto Amendment Act, 1978*.

SECTION 3. The amendment to section 122 is complementary to *The Municipal Elections Act, 1977*. The date for the first meeting of The Metropolitan Toronto School Board is advanced to conform to the new commencement date of December 1st for the term of office of the boards of education.

*An Act to amend
The Municipality of Metropolitan
Toronto Act*

1st Reading

June 6th, 1978

2nd Reading

3rd Reading

THE HON. T. L. WELLS
Minister of Education

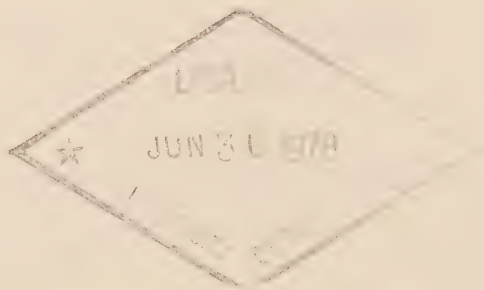
(Government Bill)

BILL 111

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to amend
The Municipality of Metropolitan Toronto Act**

THE HON. T. L. WELLS
Minister of Education



BILL 111

1978

An Act to amend The Municipality of Metropolitan Toronto Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 119 of *The Municipality of Metropolitan Toronto Act*, being chapter 295 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1972, chapter 54, section 3, is repealed and the following substituted therefor:

s. 119 (1).
re-enacted

 - (1) The provisions of *The Education Act, 1974* and the regulations that are not inconsistent with this Act apply to the boards of education referred to in subsection 1 of section 118, and, so far as such provisions are inconsistent with this Act, they do not apply to such boards of education.

Application
of 1974,
c. 109
 - (2) Subsection 1a of the said section 119, as enacted by the Statutes of Ontario, 1972, chapter 54, section 3, is repealed.

s. 119 (1a).
repealed
 - (3) Subsection 3 of the said section 119 is amended by striking out “section 71 of *The Schools Administration Act*” in the second line and inserting in lieu thereof “section 210 of *The Education Act, 1974*”.

s. 119 (3).
amended
 - (4) Subsection 4 of the said section 119 is amended by striking out “Part VI of *The Schools Administration Act*” in the second and third lines and inserting in lieu thereof “Part X of *The Education Act, 1974*”.

s. 119 (4).
amended
2. Section 120 of the said Act is repealed and the following substituted therefor:

s. 120.
re-enacted

120. The first meeting of each such board of education after a regular election shall be held not later than the seventh day following the day on which the terms of office

First
meeting

of the elected members commence at such place and time as the board may determine.

s. 122 (1).
re-enacted

- 3.** Subsection 1 of section 122 of the said Act is repealed and the following substituted therefor:

First
meeting
of
School
Board

(1) The first meeting of the School Board after a regular election shall be held after the boards of education for the area municipalities have held their first meetings, but in any event, not later than the fourteenth day following the day on which the terms of office of the members of such boards of education commence, at such place and time as may be fixed by resolution of the School Board.

Commence-
ment

- 4.** This Act comes into force on the day it receives Royal Assent.

Short title

- 5.** The short title of this Act is *The Municipality of Metropolitan Toronto Amendment Act, 1978*.

BILL 111

An Act to amend
The Municipality of Metropolitan
Toronto Act

1st Reading

June 6th, 1978

2nd Reading

June 16th, 1978

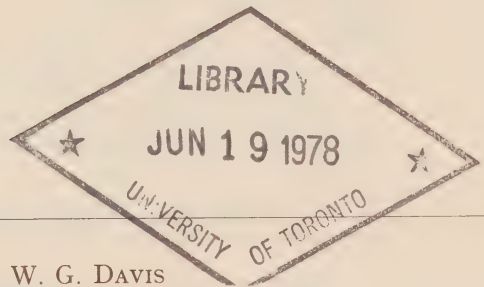
3rd Reading

June 16th, 1978

THE HON. T. L. WELLS
Minister of Education

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to prohibit Discrimination in Business
Relationships**



THE HON. W. G. DAVIS
Premier

EXPLANATORY NOTE

The purpose of the Bill is to prevent discrimination in the business community on the basis of race, creed, colour, nationality, ancestry, place of origin or geographical location.

Provision is made for orders for compliance, assurances of voluntary compliance and enforcement of orders and assurances.

The right, enforceable by action in court, is also given to compensation for loss or damage and to punitive or exemplary damages incurred as the result of a breach of the Act.

Contravention of the Act will disqualify a person from entering into a contract to provide goods or services to the Crown or an agency of the Crown.

Provision is also made for obtaining an order of the Supreme Court prohibiting the continuation or repetition of a contravention of the Act.

BILL 112

1978

An Act to prohibit Discrimination in Business Relationships

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "designated information" means information as to the race, creed, colour, nationality, ancestry, place of origin or geographical location of a person;
- (b) "Director" means the Director under *The Ministry of Consumer and Commercial Relations Act*; R.S.O. 1970,
c. 113
- (c) "Minister" means the Minister of Consumer and Commercial Relations;
- (d) "person" includes a partnership, sole proprietorship, unincorporated association and governmental agency;
- (e) "person connected", when used in relation to another person, means an employee, agent, partner or associate of the other person and, where the other person is a corporation, includes a director, officer, shareholder or member of the corporation;
- (f) "Tribunal" means The Commercial Registration Appeal Tribunal under *The Ministry of Consumer and Commercial Relations Act*.

2. The purpose and intent of this Act is to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of origin or geographical location of persons employed in or engaging in business. Purpose
and intent
of Act

3. This Act does not apply to:

Where Act
does not
apply

1. The withholding of services or employment in the course of a lawful strike, lock-out or other labour dispute.
2. A discriminatory business practice engaged in in accordance with a policy of the Government of Canada or the Government of Ontario directed toward trade with a country other than Canada or persons in a country other than Canada.

Discriminatory
business
practices

4. For the purposes of this Act, the following shall be deemed to be discriminatory business practices:

1. A refusal or an agreement to refuse, by a person in Ontario, to sell goods or services to, to buy goods or services from or otherwise to engage in business with a second person,
 - (a) because of the race, creed, colour, nationality, ancestry, place of origin or geographical location of the second person or of a person connected with the second person; or
 - (b) because of any of the attributes set out in clause *a* of nationals of a country with the government of which the second person conducts, has conducted or may conduct business.
2. A refusal or an agreement to refuse, by a person in Ontario, to sell goods or services to, to buy goods or services from or otherwise to engage in business with a second person because of a business conducted between the second person and a third person, whether supplier, customer or otherwise,
 - (a) because of the race, creed, colour, nationality, ancestry, place of origin or geographical location of the third person or of a person connected with the third person; or
 - (b) because of any of the attributes set out in clause *a* of nationals of a country with the government of which the third person conducts, has conducted or may conduct business.
3. A dismissal, a refusal or failure to employ or to appoint, a suspension of employment of or a refusal or failure to promote a second person, or an agreement to take or to refuse or to fail to take any such action, by a person in Ontario,

- (a) because of the race, creed, colour, nationality, ancestry, place of origin or geographical location of the second person;
- (b) because of any of the attributes set out in clause *a* of a third person with whom the second person conducts, has conducted or may conduct business; or
- (c) because of any of the attributes set out in clause *a* of nationals of a country with the government of which the second person conducts, has conducted or may conduct business.

4. Entering in Ontario into a contract that includes a provision that one of the parties to the contract will do an act specified in paragraph 1, 2 or 3 in relation to a person who is not a party to the contract as a condition to entry into the contract.

5.—(1) No person in Ontario shall engage in a discriminatory business practice. Discriminatory business practices prohibited

(2) No person in Ontario shall seek or agree to seek any designated information from a second person in respect of, Seeking designated information prohibited

- (a) the second person or a person connected with the second person; or
- (b) a third person with whom the second person conducts, has conducted or may conduct business or a person connected with the third person,

as a condition of engaging in business with the second person.

(3) No person in Ontario shall provide or agree to provide to a second person or to a government any designated information in respect of, Providing designated information prohibited

- (a) the person or a person connected with the person;
or
- (b) any third person,

as a condition of engaging in business with the second person or a government.

(4) No person in Ontario shall seek or provide a statement, whether written or oral, to the effect that any goods Negative statements of origin prohibited

or services supplied or rendered by any person or government do not originate in whole or in part in a specific location, territory or country, but this subsection does not prohibit a person in Ontario from seeking or providing a statement, whether written or oral, to the effect that any goods or services supplied or rendered by any person or government originate in whole or in part in a specific location, territory or country.

Seeking or
providing
information
for
discrimin-
atory
business
practice

(5) No person in Ontario shall seek or provide information, whether written or oral, for the purpose of engaging in a discriminatory business practice, as to whether or not the person or any other person is a member of or has made contributions to or is otherwise associated with or involved in the activities of a charitable, fraternal or service organization.

Idem

(6) Where information specified in subsection 5 is provided by a person to another person, the information shall be deemed to be provided for the purpose of engaging in a discriminatory business practice unless the person providing the information establishes that it is provided for another purpose.

One act
deemed
practice

(7) A person who performs one act referred to in section 4 shall be deemed to be engaging in a discriminatory business practice.

Report to
Director

(8) Every person who receives a request, whether oral or in writing, to engage in a discriminatory business practice or to do an act that would be a contravention of subsection 2, 3, 4 or 5 shall report the request and the response to the request forthwith to the Director and shall provide the Director with such other information in respect of the request as the Director may require.

Order to
cease dis-
criminatory
business
practice or
contraven-
tion of s. 5

6.—(1) Where the Director has reason to believe that a person is engaging or has engaged in a discriminatory business practice or is contravening or has contravened subsection 2, 3, 4, 5 or 8 of section 5, the Director may order the person to comply with section 5 in respect of the discriminatory business practice or the contravention specified in the order.

Application
of
1974, c. 131

(2) Where the Director proposes to make an order under subsection 1, subsections 2 to 7 of section 6 of *The Business Practices Act, 1974* apply with necessary modifications.

Order for
immediate
compliance

(3) Notwithstanding subsection 2, the Director may make an order under subsection 1 to take effect immediately

where, in his opinion, to do so is necessary for the protection of the public or of any person and in such case subsections 2 to 5 of section 7 of *The Business Practices Act, 1974* apply ^{1974, c. 131} with necessary modifications and, subject to subsections 3 and 4 of section 7 of that Act, the order takes effect immediately.

(4) Notwithstanding that, under section 9b of *The Ministry of Consumer and Commercial Relations Act*, an appeal is taken from an order of the Tribunal made under this section, the order takes effect immediately, but the Tribunal may grant a stay until the disposition of the appeal. ^{Stay R.S.O. 1970, c. 113}

7.—(1) Any person against whom the Director proposes to make an order to comply with section 5 may enter into a written assurance of voluntary compliance in a form that the Director may prescribe undertaking not to engage in the specified discriminatory business practice or other contravention of section 5 after the date thereof. ^{Assurance of voluntary compliance}

(2) Where an assurance of voluntary compliance is accepted by the Director, the assurance has and shall be given for all purposes of this Act the force and effect of an order made by the Director. ^{Assurance deemed order}

(3) An assurance of voluntary compliance may include such undertakings as are acceptable to the Director and the Director may receive a bond and collateral therefor as security for the reimbursement of the Treasurer of Ontario for investigation and other costs in such amount as is satisfactory to the Director. ^{Under-takings}

(4) The Director,

^{Duties of Director}

(a) shall receive and act on or mediate complaints respecting discriminatory business practices and other contraventions of section 5; and

(b) shall maintain available for public inspection a record of,

(i) assurances of voluntary compliance entered into under this Act, and

(ii) orders made under this Act, other than orders in respect of which hearings or appeals are pending, to cease engaging in discriminatory business practices or other contraventions of section 5.

Investigation by
Director

8. Where, upon a statement made under oath, the Director has reason to believe that a person is contravening or is about to contravene any provision of this Act or an order or assurance of voluntary compliance made or given pursuant to this Act, the Director may by order appoint one or more persons to make an investigation as to whether or not such a contravention has occurred or is about to occur and the person or persons appointed shall report the result of the investigation to the Director and subsections 2 to 8 of section 11 of *The Business Practices Act, 1974* apply with necessary modifications.

1974, c. 131

Right to
compensation

9.—(1) A person that incurs loss or damage as a result of an act that is a contravention of this Act has the right to compensation for the loss or damage and to punitive or exemplary damages from the person who committed the contravention.

Enforcement of
right

(2) The right to compensation mentioned in subsection 1 may be enforced by action in a court of competent jurisdiction.

Disqualification of
person
supporting
boycott

10.—(1) Every person against whom an order is made under section 6 or 11 or who is convicted of an offence under clause *d* or *e* of subsection 1 of section 16 is ineligible to enter into a contract to provide goods or service to the Crown or any agency of the Crown for a period of five years from the date of the making of the order or of the conviction, as the case may be.

Contractual
provision

(2) A provision in a contract that provides for a matter that is a discriminatory business practice is a nullity and is severable from the contract.

Proceedings to
prohibit
continuation or
repetition of
contravention

11.—(1) Where any provision of this Act is contravened, notwithstanding any other remedy or any penalty, the Minister or any person who complains of injury due to the contravention may apply to a judge of the Supreme Court by originating motion for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the judge, will result or is likely to result in the continuation or repetition of the contravention by the person committing the contravention, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Supreme Court.

Variation or
rescission
of order

(2) A person against whom an order has been made under subsection 1 may apply to a judge of the Supreme Court for an order varying or rescinding the order made under subsection 1.

12. Any notice or document required by this Act to be served or given may be served or given personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

13. Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 8, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act or any proceeding under or pursuant to this Act;
- (b) to his counsel or to the court in any proceeding under or pursuant to this Act;
- (c) to inform the person involved of a discriminatory business practice and of any information relevant to the person's rights under this Act; or
- (d) with the consent of the person to whom the information relates.

14. A copy of an order or assurance of voluntary compliance purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

15. The Lieutenant Governor in Council may make regulations exempting any person or class of persons from any provision of this Act.

16.—(1) Every person who, knowingly,

- (a) furnishes false information in an investigation under this Act;

- (b) fails to comply with any order or assurance of voluntary compliance made or entered into under this Act;
- (c) obstructs a person making an investigation under section 8;
- (d) contravenes any provision of subsection 2, 3, 4, 5 or 8 of section 5; or
- (e) contravenes any provision of section 13,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

Corporation

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$50,000 and not as provided therein.

Directors
and
officers

(3) Where a corporation has been convicted of an offence under subsection 1 or 2,

- (a) each director of the corporation; and
- (b) each officer, servant or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is a party to the offence unless he satisfies the court that he did not authorize, permit or acquiesce in the offence.

Limitation
period

(4) No proceeding under this section shall be commenced more than two years after the time when the subject-matter of the proceeding arose.

Annual
report

17. The Director shall report annually to the Minister on the enforcement of this Act and on such other matters related to this Act as the Director considers advisable or the Minister may require, and the report shall set out,

- (a) the names of all persons who entered into assurances of voluntary compliance under this Act in the year with the Director;
- (b) the names of all persons against whom orders, other than orders in respect of which hearings or appeals are pending, have been made under this Act in the year to cease engaging in discriminatory

business practices or other contraventions of section 5;

- (c) the number of complaints received by the Director in the year respecting discriminatory business practices and other contraventions of section 5, together with,
 - (i) the number of complaints mediated and the results of the mediations, and
 - (ii) the number of complaints acted on and the action taken;
- (d) the number and nature of the requests and responses reported to the Director in accordance with subsection 8 of section 5 in the year, the action taken thereon and the results of the action taken; and
- (e) the names of all persons convicted of offences under this Act in the year, including the offence for which each was convicted and, in each case, the penalty imposed,

and the Minister shall lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

18. This Act comes into force on the day it receives Royal Assent. Commence-
ment

19. The short title of this Act is *The Discriminatory Business Practices Act, 1978*. Short title

An Act to prohibit
Discrimination in Business
Relationships

1st Reading

June 8th, 1978

2nd Reading

3rd Reading

THE HON. W. G. DAVIS
Premier

(Government Bill)

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Government
Publications

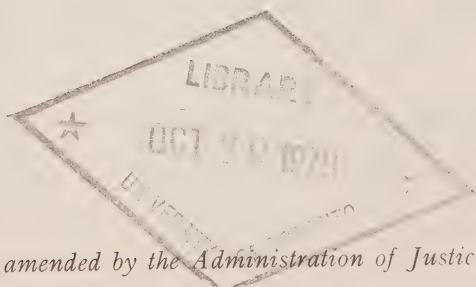
BILL 112

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to prohibit Discrimination in Business Relationships

THE HON. W. G. DAVIS
Premier



(Reprinted as amended by the Administration of Justice Committee)

EXPLANATORY NOTE

The purpose of the Bill is to prevent discrimination in the business community on the basis of race, creed, colour, nationality, ancestry, place of origin, sex or geographical location.

Provision is made for orders for compliance, assurances of voluntary compliance and enforcement of orders and assurances.

The right, enforceable by action in court, is also given to compensation for loss or damage and to punitive or exemplary damages incurred as the result of a breach of the Act.

Contravention of the Act will disqualify a person from entering into a contract to provide goods or services to the Crown or an agency of the Crown.

Provision is also made for obtaining an order of the Supreme Court prohibiting the continuation or repetition of a contravention of the Act.

BILL 112

1978

An Act to prohibit Discrimination in Business Relationships

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "designated information" means information as to the race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of a person;
- (b) "Director" means the Director under *The Ministry of Consumer and Commercial Relations Act*; R.S.O. 1970,
c. 113
- (c) "Minister" means the Minister of Consumer and Commercial Relations;
- (d) "person" includes a partnership, sole proprietorship, unincorporated association and governmental agency;
- (e) "person connected", when used in relation to another person, means an employee, agent, partner or associate of the other person and, where the other person is a corporation, includes a director, officer, shareholder or member of the corporation;
- (f) "Tribunal" means The Commercial Registration Appeal Tribunal under *The Ministry of Consumer and Commercial Relations Act*.

2. The purpose and intent of this Act is to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of persons employed in or engaging in business. Purpose
and intent
of Act

3. This Act does not apply to:

Where Act
does not
apply

1. The withholding of services or employment in the course of a lawful strike, lock-out or other labour dispute.
2. A discriminatory business practice engaged in in accordance with a policy of the Government of Canada directed toward trade with a country other than Canada or persons in a country other than Canada or of the Government of Ontario directed toward persons in Provinces or Territories other than Ontario.

Discrimin-
atory
business
practices



4.—(1) For the purposes of this Act, the following shall be deemed to be discriminatory business practices:

1. A refusal to engage in business with a second person, where the refusal,
 - (a) is on account of an attribute,
 - (i) of the second person, or
 - (ii) of a third person with whom the second person conducts, has conducted or may conduct business; and
 - (b) is a condition of the engaging in business of the person making the refusal and another person.
2. A refusal or failure to employ, appoint or promote a second person or a dismissal or suspension of a second person from employment, where the refusal, failure, dismissal or suspension,
 - (a) is on account of an attribute,
 - (i) of the second person, or
 - (ii) of a third person with whom the second person conducts, has conducted or may conduct business; and
 - (b) is a condition of the engaging in business of the person making the refusal, failure, suspension or dismissal and another person.
3. Entering into a contract that includes a provision that one of the parties to the contract,

- (a) will refuse to engage in business with a second person; or
- (b) will refuse or fail to employ or promote or will dismiss or suspend from employment a second person,

on account of an attribute of the second person or of a third person with whom the second person conducts, has conducted or may conduct business.

(2) In subsection 1,

Interpretation

- (a) "attribute", with reference to a person, means the race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of the person, and includes the race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of a person connected with the person or of nationals of a country with the government of which the person conducts, has conducted or may conduct business;
- (b) "engaging in business" includes selling goods or services to or buying goods or services from, and "engage in business" has a corresponding meaning;
- (c) "refusal" includes agreement to refuse.

5.—(1) No person in Ontario shall engage in a discriminatory business practice.

Discriminatory business practices prohibited



(2) No person shall seek or agree to seek from a second person and no person shall provide or agree to provide to a second person any designated information in respect of any person for the purpose of engaging in or assisting in engaging in a discriminatory business practice as defined in section 4.

Seeking or providing designated information for discriminatory business practice

(3) Where designated information is sought or agreed to be sought from a second person or is provided or agreed to be provided to a second person, the designated information shall be deemed to be sought, agreed to be sought or to be provided or agreed to be provided, as the case may be, for the purpose of engaging in or assisting in engaging in a discriminatory business practice unless the person that so acted establishes that it is sought, agreed to be sought or is provided or agreed to be provided for another purpose.

Idem

(4) No person in Ontario shall seek or provide a statement, whether written or oral, to the effect that any goods

Negative statements of origin prohibited

or services supplied or rendered by any person or government do not originate in whole or in part in a specific location, territory or country for the purpose of engaging in or assisting in engaging in a discriminatory business practice as defined in section 4, but this subsection does not prohibit a person in Ontario from seeking or providing a statement, whether written or oral, to the effect that any goods or services supplied or rendered by any person or government originate in whole or in part in a specific location, territory or country.

Seeking or
providing
information
for discrim-
inatory
business
practice

(5) No person in Ontario shall seek or provide information, whether written or oral, for the purpose of engaging in a discriminatory business practice, as to whether or not the person or any other person is a member of or has made contributions to or is otherwise associated with or involved in the activities of a charitable, fraternal or service organization.

Idem

(6) Where information specified in subsection 5 is sought from a person or is provided by a person to another person in response to a request, the information shall be deemed to be sought or provided, as the case may be, for the purpose of engaging in a discriminatory business practice unless the person that so acted establishes that it is sought or provided for another purpose.

One act
deemed
practice

(7) A person who performs one act referred to in section 4 shall be deemed to be engaging in a discriminatory business practice.

Report to
Director

(8) Every person who receives a request, whether oral or in writing, to engage in a discriminatory business practice or to do an act that would be a contravention of subsection 2, 4 or 5 shall report the request and the response to the request within thirty days to the Director and shall provide the Director with such other information in respect of the request as the Director may require.

Order to
cease dis-
criminatory
business
practice or
contravention
of s. 5

6.—(1) Where the Director has reason to believe that a person is engaging or has engaged in a discriminatory business practice or is contravening or has contravened subsection 2, 4, 5 or 8 of section 5, the Director may order the person to comply with section 5 in respect of the discriminatory business practice or the contravention specified in the order.

Application
of
1974, c. 131

(2) Where the Director proposes to make an order under subsection 1, subsections 2 to 7 of section 6 of *The Business Practices Act, 1974* apply with necessary modifications.

(3) Notwithstanding subsection 2, the Director may make an order under subsection 1 to take effect immediately where, in his opinion, to do so is necessary for the protection of the public or of any person and in such case subsections 2 to 5 of section 7 of *The Business Practices Act, 1974* apply with necessary modifications and, subject to subsections 3 and 4 of section 7 of that Act, the order takes effect immediately.

Order for
immediate
compliance

1974, c. 131

(4) Notwithstanding that, under section 9b of *The Ministry of Consumer and Commercial Relations Act*, an appeal is taken from an order of the Tribunal made under this section, the order takes effect immediately, but the Tribunal may grant a stay until the disposition of the appeal.

Stay
R.S.O. 1970,
c. 113

7.—(1) Any person against whom the Director proposes to make an order to comply with section 5 may enter into a written assurance of voluntary compliance in a form that the Director may prescribe undertaking not to engage in the specified discriminatory business practice or other contravention of section 5 after the date thereof.

Assurance of
voluntary
compliance

(2) Where an assurance of voluntary compliance is accepted by the Director or an order is made by the Director with the consent of each person to be named in the order, the assurance or consent order has and shall be given for all purposes of this Act the force and effect, other than the disqualification provided by subsection 1 of section 10, of an order made by the Director.

Assurance
or consent
order
deemed
order

(3) An assurance of voluntary compliance may include such undertakings as are acceptable to the Director and the Director may receive a bond and collateral therefor as security for the reimbursement of the Treasurer of Ontario for investigation and other costs in such amount as is satisfactory to the Director.

Under-
takings

(4) The Director,

Duties of
Director

(a) shall receive and act on or mediate complaints respecting discriminatory business practices and other contraventions of section 5; and

(b) shall maintain available for public inspection a record of,

(i) assurances of voluntary compliance entered into under this Act, and

- (ii) orders made under this Act, other than orders in respect of which hearings or appeals are pending, to cease engaging in discriminatory business practices or other contraventions of section 5.

Investigation
by Director

8. Where, upon a statement made under oath, the Director has reason to believe that a person is contravening or is about to contravene any provision of this Act or an order or assurance of voluntary compliance made or given pursuant to this Act, the Director may by order appoint one or more persons to make an investigation as to whether or not such a contravention has occurred or is about to occur and the person or persons appointed shall report the result of the investigation to the Director and subsections 2 to 8 of section 11 of *The Business Practices Act, 1974* apply with necessary modifications.

1974, c. 131

Right to
compensation

9.—(1) A person that incurs loss or damage as a result of an act that is a contravention of this Act has the right to compensation for the loss or damage and to punitive or exemplary damages from the person who committed the contravention.

Enforcement
of right

(2) The right to compensation mentioned in subsection 1 may be enforced by action in a court of competent jurisdiction.

Disquali-
fication of
person
supporting
boycott

10.—(1) Every person against whom an order is made under section 6 or 11 or who is convicted of an offence under clause *d* or *e* of subsection 1 of section 15 is ineligible to enter into a contract to provide goods or service to the Crown or any agency of the Crown for a period of five years from the date of the making of the order or of the conviction, as the case may be.

Contractual
provision

(2) A provision in a contract that provides for a matter that is a discriminatory business practice is a nullity and is severable from the contract.

Proceedings
to prohibit
continuation
or repetition
of contra-
vention

11.—(1) Where any provision of this Act is contravened, notwithstanding any other remedy or any penalty, the Minister or any person who complains of injury due to the contravention may apply to a judge of the Supreme Court by originating motion for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the judge, will result or is likely to result in the continuation or repetition of the contravention by the person committing the contravention, and the judge may make the order and it

may be enforced in the same manner as any other order or judgment of the Supreme Court.

(2) A person against whom an order has been made under subsection 1 may apply to a judge of the Supreme Court for an order varying or rescinding the order made under subsection 1. Variation
or rescission
of order

12. Any notice or document required by this Act to be served or given may be served or given personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date. Service of
notice

13. Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 8, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except, Matters
confidential

- (a) as may be required in connection with the administration of this Act or any proceeding under or pursuant to this Act;
- (b) to his counsel or to the court in any proceeding under or pursuant to this Act;
- (c) to inform the person involved of a discriminatory business practice and of any information relevant to the person's rights under this Act; or
- (d) with the consent of the person to whom the information relates.

14. A copy of an order or assurance of voluntary compliance purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. Certificate
of Director
as evidence

15.—(1) Every person who, knowingly,

Offences

- (a) furnishes false information in an investigation under this Act;
- (b) fails to comply with any order or assurance of voluntary compliance made or entered into under this Act;
- (c) obstructs a person making an investigation under section 8;
- (d) contravenes any provision of subsection 2, 4, 5 or 8 of section 5; or
- (e) contravenes any provision of section 13,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

Corporation

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$50,000 and not as provided therein.

Directors
and
officers

(3) Where a corporation has been convicted of an offence under subsection 1 or 2,

- (a) each director of the corporation; and
- (b) each officer, servant or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is a party to the offence unless he satisfies the court that he did not authorize, permit or acquiesce in the offence.

Limitation
period

(4) No proceeding under this section shall be commenced more than two years after the time when the subject-matter of the proceeding arose.

Annual
report

16. The Director shall report annually to the Minister on the enforcement of this Act and on such other matters related to this Act as the Director considers advisable or the Minister may require, and the report shall set out,

- (a) the names of all persons who entered into assurances of voluntary compliance under this Act in the year with the Director;
- (b) the names of all persons against whom orders, other than orders in respect of which hearings or

appeals are pending, have been made under this Act in the year to cease engaging in discriminatory business practices or other contraventions of section 5;

- (c) the number of complaints received by the Director in the year respecting discriminatory business practices and other contraventions of section 5, together with,
 - (i) the number of complaints mediated and the results of the mediations, and
 - (ii) the number of complaints acted on and the action taken;
- (d) the number and nature of the requests and responses reported to the Director in accordance with subsection 8 of section 5 in the year, the action taken thereon and the results of the action taken; and
- (e) the names of all persons convicted of offences under this Act in the year, including the offence for which each was convicted and, in each case, the penalty imposed,

and the Minister shall lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

17. This Act comes into force on the day it receives Royal Assent. Commence-
ment

18. The short title of this Act is *The Discriminatory Business Practices Act, 1978*. Short title

An Act to prohibit
Discrimination in Business
Relationships

1st Reading

June 8th, 1978

2nd Reading

June 20th, 1978

3rd Reading

THE HON. W. G. DAVIS
Premier

(Reprinted as amended by the
Administration of Justice Committee)

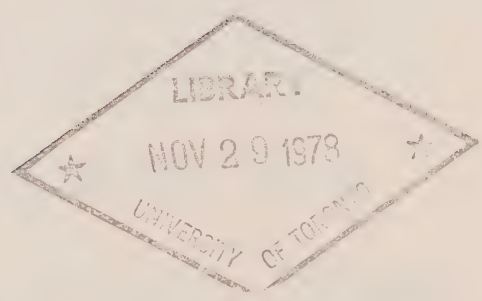
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BILL 112

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

**An Act to prohibit Discrimination in Business
Relationships**

THE HON. W. G. DAVIS
Premier



BILL 112

1978

An Act to prohibit Discrimination in Business Relationships

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "designated information" means information as to the race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of a person;
- (b) "Director" means the Director under *The Ministry of Consumer and Commercial Relations Act*; R.S.O. 1970,
c. 113
- (c) "Minister" means the Minister of Consumer and Commercial Relations;
- (d) "person" includes a partnership, sole proprietorship, unincorporated association and governmental agency;
- (e) "person connected", when used in relation to another person, means an employee, agent, partner or associate of the other person and, where the other person is a corporation, includes a director, officer, shareholder or member of the corporation;
- (f) "Tribunal" means The Commercial Registration Appeal Tribunal under *The Ministry of Consumer and Commercial Relations Act*.

2. The purpose and intent of this Act is to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of persons employed in or engaging in business. Purpose
and intent
of Act

3. This Act does not apply to:

Where Act
does not
apply

1. The withholding of services or employment in the course of a lawful strike, lock-out or other labour dispute.
2. A discriminatory business practice engaged in in accordance with a policy of the Government of Canada directed toward trade with a country other than Canada or persons in a country other than Canada or of the Government of Ontario directed toward persons in Provinces or Territories other than Ontario.

Discrimin-
atory
business
practices

4.—(1) For the purposes of this Act, the following shall be deemed to be discriminatory business practices:

1. A refusal to engage in business with a second person, where the refusal,
 - (a) is on account of an attribute,
 - (i) of the second person, or
 - (ii) of a third person with whom the second person conducts, has conducted or may conduct business; and
 - (b) is a condition of the engaging in business of the person making the refusal and another person.
2. A refusal or failure to employ, appoint or promote a second person or a dismissal or suspension of a second person from employment, where the refusal, failure, dismissal or suspension,
 - (a) is on account of an attribute,
 - (i) of the second person, or
 - (ii) of a third person with whom the second person conducts, has conducted or may conduct business; and
 - (b) is a condition of the engaging in business of the person making the refusal, failure, suspension or dismissal and another person.
3. Entering into a contract that includes a provision that one of the parties to the contract,

- (a) will refuse to engage in business with a second person; or
- (b) will refuse or fail to employ or promote or will dismiss or suspend from employment a second person,

on account of an attribute of the second person or of a third person with whom the second person conducts, has conducted or may conduct business.

(2) In subsection 1,

Interpretation

- (a) "attribute", with reference to a person, means the race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of the person, and includes the race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of a person connected with the person or of nationals of a country with the government of which the person conducts, has conducted or may conduct business;
- (b) "engaging in business" includes selling goods or services to or buying goods or services from, and "engage in business" has a corresponding meaning;
- (c) "refusal" includes agreement to refuse.

5.—(1) No person in Ontario shall engage in a discriminatory business practice.

Discriminatory business practices prohibited

(2) No person shall seek or agree to seek from a second person and no person shall provide or agree to provide to a second person any designated information in respect of any person for the purpose of engaging in or assisting in engaging in a discriminatory business practice as defined in section 4.

Seeking or providing designated information for discriminatory business practice

(3) Where designated information is sought or agreed to be sought from a second person or is provided or agreed to be provided to a second person, the designated information shall be deemed to be sought, agreed to be sought or to be provided or agreed to be provided, as the case may be, for the purpose of engaging in or assisting in engaging in a discriminatory business practice unless the person that so acted establishes that it is sought, agreed to be sought or is provided or agreed to be provided for another purpose.

Idem

(4) No person in Ontario shall seek or provide a statement, whether written or oral, to the effect that any goods

Negative statements of origin prohibited

or services supplied or rendered by any person or government do not originate in whole or in part in a specific location, territory or country for the purpose of engaging in or assisting in engaging in a discriminatory business practice as defined in section 4, but this subsection does not prohibit a person in Ontario from seeking or providing a statement, whether written or oral, to the effect that any goods or services supplied or rendered by any person or government originate in whole or in part in a specific location, territory or country.

Seeking or
providing
information
for discrimin-
atory
business
practice

(5) No person in Ontario shall seek or provide information, whether written or oral, for the purpose of engaging in a discriminatory business practice, as to whether or not the person or any other person is a member of or has made contributions to or is otherwise associated with or involved in the activities of a charitable, fraternal or service organization.

Idem

(6) Where information specified in subsection 5 is sought from a person or is provided by a person to another person in response to a request, the information shall be deemed to be sought or provided, as the case may be, for the purpose of engaging in a discriminatory business practice unless the person that so acted establishes that it is sought or provided for another purpose.

One act
deemed
practice

(7) A person who performs one act referred to in section 4 shall be deemed to be engaging in a discriminatory business practice.

Report to
Director

(8) Every person who receives a request, whether oral or in writing, to engage in a discriminatory business practice or to do an act that would be a contravention of subsection 2, 4 or 5 shall report the request and the response to the request within thirty days to the Director and shall provide the Director with such other information in respect of the request as the Director may require.

Order to
cease dis-
criminatory
business
practice or
contravention
of s. 5

6.—(1) Where the Director has reason to believe that a person is engaging or has engaged in a discriminatory business practice or is contravening or has contravened subsection 2, 4, 5 or 8 of section 5, the Director may order the person to comply with section 5 in respect of the discriminatory business practice or the contravention specified in the order.

Application
of
1974, c. 131

(2) Where the Director proposes to make an order under subsection 1, subsections 2 to 7 of section 6 of *The Business Practices Act, 1974* apply with necessary modifications.

(3) Notwithstanding subsection 2, the Director may make an order under subsection 1 to take effect immediately where, in his opinion, to do so is necessary for the protection of the public or of any person and in such case subsections 2 to 5 of section 7 of *The Business Practices Act, 1974* apply with necessary modifications and, subject to subsections 3 and 4 of section 7 of that Act, the order takes effect immediately.

Order for
immediate
compliance

1974, c. 131

(4) Notwithstanding that, under section 9b of *The Ministry of Consumer and Commercial Relations Act*, an appeal is taken from an order of the Tribunal made under this section, the order takes effect immediately, but the Tribunal may grant a stay until the disposition of the appeal.

Stay
R.S.O. 1970,
c. 113

7.—(1) Any person against whom the Director proposes to make an order to comply with section 5 may enter into a written assurance of voluntary compliance in a form that the Director may prescribe undertaking not to engage in the specified discriminatory business practice or other contravention of section 5 after the date thereof.

Assurance of
voluntary
compliance

(2) Where an assurance of voluntary compliance is accepted by the Director or an order is made by the Director with the consent of each person to be named in the order, the assurance or consent order has and shall be given for all purposes of this Act the force and effect, other than the disqualification provided by subsection 1 of section 10, of an order made by the Director.

Assurance
or consent
order
deemed
order

(3) An assurance of voluntary compliance may include such undertakings as are acceptable to the Director and the Director may receive a bond and collateral therefor as security for the reimbursement of the Treasurer of Ontario for investigation and other costs in such amount as is satisfactory to the Director.

Under-
takings

(4) The Director,

Duties of
Director

(a) shall receive and act on or mediate complaints respecting discriminatory business practices and other contraventions of section 5; and

(b) shall maintain available for public inspection a record of,

(i) assurances of voluntary compliance entered into under this Act, and

- (ii) orders made under this Act, other than orders in respect of which hearings or appeals are pending, to cease engaging in discriminatory business practices or other contraventions of section 5.

Investigation
by Director

8. Where, upon a statement made under oath, the Director has reason to believe that a person is contravening or is about to contravene any provision of this Act or an order or assurance of voluntary compliance made or given pursuant to this Act, the Director may by order appoint one or more persons to make an investigation as to whether or not such a contravention has occurred or is about to occur and the person or persons appointed shall report the result of the investigation to the Director and subsections 2 to 8 of section 11 of *The Business Practices Act, 1974* apply with necessary modifications.

1974, c. 131

Right to
compensation

9.—(1) A person that incurs loss or damage as a result of an act that is a contravention of this Act has the right to compensation for the loss or damage and to punitive or exemplary damages from the person who committed the contravention.

Enforcement
of right

(2) The right to compensation mentioned in subsection 1 may be enforced by action in a court of competent jurisdiction.

Disquali-
fication of
person
supporting
boycott

10.—(1) Every person against whom an order is made under section 6 or 11 or who is convicted of an offence under clause *d* or *e* of subsection 1 of section 16 is ineligible to enter into a contract to provide goods or service to the Crown or any agency of the Crown for a period of five years from the date of the making of the order or of the conviction, as the case may be.

Contractual
provision

(2) A provision in a contract that provides for a matter that is a discriminatory business practice is a nullity and is severable from the contract.

Proceedings
to prohibit
continuation
or repetition
of contra-
vention

11.—(1) Where any provision of this Act is contravened, notwithstanding any other remedy or any penalty, the Minister or any person who complains of injury due to the contravention may apply to a judge of the Supreme Court by originating motion for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the judge, will result or is likely to result in the continuation or repetition of the contravention by the person committing the contravention, and the judge may make the order and it

may be enforced in the same manner as any other order or judgment of the Supreme Court.

(2) A person against whom an order has been made under subsection 1 may apply to a judge of the Supreme Court for an order varying or rescinding the order made under subsection 1. Variation
or rescission
of order

12. Any notice or document required by this Act to be served or given may be served or given personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date. Service of
notice

13. Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 8, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except, Matters
confidential

- (a) as may be required in connection with the administration of this Act or any proceeding under or pursuant to this Act;
- (b) to his counsel or to the court in any proceeding under or pursuant to this Act;
- (c) to inform the person involved of a discriminatory business practice and of any information relevant to the person's rights under this Act; or
- (d) with the consent of the person to whom the information relates.

14. A copy of an order or assurance of voluntary compliance purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. Certificate
of Director
as evidence

15.—(1) The Lieutenant Governor in Council may make regulations exempting any person or class of persons from any provision of this Act. Regulations

Tabling in
Assembly

(2) A regulation made under subsection 1 shall be tabled in the Assembly as soon as practicable after the day on which it comes into force if the Assembly is in session or, if not, at the commencement of the next ensuing session.

Offences

16.—(1) Every person who, knowingly,

- (a) furnishes false information in an investigation under this Act;
- (b) fails to comply with any order or assurance of voluntary compliance made or entered into under this Act;
- (c) obstructs a person making an investigation under section 8;
- (d) contravenes any provision of subsection 2, 4, 5 or 8 of section 5; or
- (e) contravenes any provision of section 13,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.

Corporation

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$50,000 and not as provided therein.

Directors
and
officers

(3) Where a corporation has been convicted of an offence under subsection 1 or 2,

- (a) each director of the corporation; and
- (b) each officer, servant or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is a party to the offence unless he satisfies the court that he did not authorize, permit or acquiesce in the offence.

Limitation
period

(4) No proceeding under this section shall be commenced more than two years after the time when the subject-matter of the proceeding arose.

Annual
report

17. The Director shall report annually to the Minister on the enforcement of this Act and on such other matters related to this Act as the Director considers advisable or the Minister may require, and the report shall set out,

- (a) the names of all persons who entered into assurances of voluntary compliance under this Act in the year with the Director;
- (b) the names of all persons against whom orders, other than orders in respect of which hearings or appeals are pending, have been made under this Act in the year to cease engaging in discriminatory business practices or other contraventions of section 5;
- (c) the number of complaints received by the Director in the year respecting discriminatory business practices and other contraventions of section 5, together with,
 - (i) the number of complaints mediated and the results of the mediations, and
 - (ii) the number of complaints acted on and the action taken;
- (d) the number and nature of the requests and responses reported to the Director in accordance with subsection 8 of section 5 in the year, the action taken thereon and the results of the action taken; and
- (e) the names of all persons convicted of offences under this Act in the year, including the offence for which each was convicted and, in each case, the penalty imposed,

and the Minister shall lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

18. This Act comes into force on the day it receives Royal Assent. Commence-
ment

19. The short title of this Act is *The Discriminatory Business Practices Act, 1978*. Short title

An Act to prohibit
Discrimination in Business
Relationships

1st Reading

June 8th, 1978

2nd Reading

June 20th, 1978

3rd Reading

November 7th, 1978

THE HON. W. G. DAVIS
Premier

ASIN
18
-B56

Community
Applications

BILL 113

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Training Schools Act

THE HON. KEITH C. NORTON
Minister of Community and Social Services

EXPLANATORY NOTES

SECTION 1. Section 1 of the Act is amended by adding a definition of "Area Administrator" and of "place of safety". The definition of "home" is amended to clarify that it includes homes under contract with the Ministry. The definition of "parent" is enlarged to include a guardian and a person with a settled intention to treat the child as a member of the person's own family and is consistent with *The Family Law Reform Act, 1978*.

BILL 113

1978

An Act to amend The Training Schools Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *a* of section 1 of *The Training Schools Act*, being <sup>s. 1 (a),
re-enacted</sup> chapter 467 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor:
 - (a) “Area Administrator” means one or more employees of the Ministry appointed by the Minister as an Area Administrator for the purposes of this Act.
- (2) Clause *c* of the said section 1 is repealed and the following <sup>s. 1 (c),
re-enacted</sup> substituted therefor:
 - (c) “home” means a parental home, foster home or a home where residential services and other services are provided under an agreement with the Minister.
- (3) The said section 1, as amended by the Statutes of Ontario, <sup>s. 1,
amended</sup> 1977, chapter 22, section 1, is further amended by adding thereto the following clause:
 - (fa) “Ministry” means the Ministry of Community and Social Services.
- (4) Clause *h* of the said section 1 is amended by adding at the end thereof “and includes a guardian or a person who has demonstrated a settled intention to treat the child as a child of the person’s family but does not include a person who exercises the rights and duties of a legal guardian under section 17” <sup>s. 1 (h),
amended</sup>.
 - (5) The said section 1 is further amended by adding thereto <sup>s. 1,
amended</sup> the following clause:

1978, c. . . .
R.S.O. 1970,
c. 369

(ha) "place of safety" means a receiving home, foster home, hospital and such other place or class of places designated as places of safety under *The Child Welfare Act, 1978* and includes an observation and detention home established under *The Provincial Courts Act* but does not include a training school or any place in which adults are or may be imprisoned.

s. 6 (1),
re-enacted

2.—(1) Subsection 1 of section 6 of the said Act is repealed and the following substituted therefor:

Advisory
Board

(1) There shall be a board to be known as The Training Schools Advisory Board composed of such number of members as is prescribed by the regulations and the members of the Board shall be appointed by the Lieutenant Governor in Council and shall hold office during pleasure, and the Lieutenant Governor in Council may designate one of the members to be chairman of the Advisory Board.

s. 6 (6),
re-enacted

(2) Subsection 6 of the said section 6 is repealed and the following substituted therefor:

Allowance
as member
of the
Advisory
Board

(6) Each member of the Advisory Board shall be paid such *per diem* allowance as the Lieutenant Governor in Council may determine and each member is entitled to be reimbursed for the member's reasonable and necessary travelling and living expenses for attendance at meetings and in the transaction of the business of the Advisory Board.

s. 9,
re-enacted

3. Section 9 of the said Act is repealed and the following substituted therefor:

Crown
ward

9. Where,

(a) a child has contravened any statute in force in Ontario which contravention would be punishable by imprisonment if committed by an adult; and

(b) the child is at least twelve years of age and under sixteen years of age,

a judge may order that the child be made a ward of the Crown and that the child be committed to the care of the Minister.

s. 11,
re-enacted

4. Section 11 of the said Act is repealed and the following substituted therefor:

SECTION 2.—Subsection 1. Subsection 1 of section 6 of the Act currently reads as follows:

- (1) There shall be a board of not more than five members to be known as The Training Schools Advisory Board, the members of which shall be appointed by the Lieutenant Governor in Council and shall hold office during pleasure, and the Lieutenant Governor in Council may designate one of the members to be chairman of the Advisory Board.*

The amendment provides that the number of members of the Board shall be established by regulation.

Subsection 2. Subsection 6 of section 6 of the Act currently reads as follows:

- (6) The members of the Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a per diem allowance to be payable to each member, and every member is entitled to his reasonable and necessary travelling expenses, as certified by the chairman, for attendance at meetings and in the transaction of the business of the Advisory Board.*

The re-enacted subsection entitles a member of the Board to be reimbursed for living as well as travelling expenses while conducting the business of the Board.

SECTION 3. Section 9 of the Act currently reads as follows:

- 9. A judge may order that a child be sent to a training school where,*
- (a) the child is at least twelve years of age and under sixteen years of age at the time the order is made; and*
 - (b) the child has contravened any statute in force in Ontario, which contravention would be punishable by imprisonment if committed by an adult.*

The section, as re-enacted, provides that a judge may order that a child be made a Crown ward under the care of the Minister of Community and Social Services instead of ordering the child sent to a training school.

SECTION 4. Section 11 of the Act currently reads as follows:

- 11. The judge in his order sending a child to a training school shall state, where practicable, the name, age and religious faith of the child.*

The re-enactment of section 11 is complementary to the re-enactment of section 9.

SECTION 5. Subsection 1 of section 12 of the Act currently reads as follows:

- (1) *Where a judge orders that a child be sent to a training school, the judge shall cause a copy of the evidence taken before him to be sent to the superintendent of the training school and a copy to be sent to the Ministry.*

The re-enactment of the provision is complementary to the re-enactment of section 9.

SECTION 6. Section 16 of the Act requiring a probation officer or person designated by a judge to take a child to a training school is repealed in order to enable other persons to take a child to a training school. A new section 16 is substituted to provide for the appointment of Area Administrators.

SECTION 7. The re-enacted section 17 of the Act contains provisions governing the guardianship of children who are made wards of the Crown under the Act. The rights and duties of the Crown as legal guardian shall be exercised by an Area Administrator. Provision is made for the Minister or Area Administrator to place the ward in a training school or home and to transfer and release a ward. The wardship of the Crown expires when the ward attains eighteen years of age unless the Minister terminates the wardship before that date.

11. The judge, in an order made under section 9, shall state, where practicable, the name, age and religious faith of the child. Contents of order

5. Subsection 1 of section 12 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor: s. 12 (1), re-enacted

(1) Where a judge makes an order under section 9, the judge shall cause a copy of the evidence taken before the judge to be sent to the Area Administrator referred to in subsection 1 of section 17. Copy of evidence to Area Administrator

6. Section 16 of the said Act is repealed and the following substituted therefor: s. 16, re-enacted

16 The Minister may appoint one or more persons to act as an Area Administrator. Area Administrator

7. Section 17 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor: s. 17, re-enacted

17.—(1) Where a child is made a ward of the Crown and committed to the care of the Minister by order of a judge under section 9, the Crown has and shall assume all the rights and duties of a legal guardian of such child and the rights and duties of the Crown in respect of the child shall be exercised by the Area Administrator for the area where the judge who made the order presides unless the Minister, by order, designates another Area Administrator for the purpose. Crown wardship

(2) Any or all of the rights and duties of the Crown to be exercised by an Area Administrator under subsection 1 may be delegated by the Area Administrator to any other employee of the Ministry. Delegation

(3) During the period that a child is a ward of the Crown under this Act, the rights and duties of the child's parents or other guardians in respect of the care, custody and control of the child are suspended. Rights of parents and other guardians

(4) Where a child is made a ward of the Crown under this Act, the Minister or the Area Administrator who exercises the rights and duties of the Crown in respect of the child shall, by order, place the ward in a training school or home, and may, from time to time, Transfer, release of ward

- (a) transfer the ward from one training school to another or to a home;
- (b) transfer the ward from one home to another or to a training school; or
- (c) release the ward from a training school upon such conditions as the Minister or the Area Administrator thinks fit,

and where an order is made under clause *a*, *b* or *c*, the order shall indicate the Area Administrator who shall exercise the rights and duties referred to in subsection 1.

Expiry,
termination
of wardship

(5) The wardship of the Crown expires upon the ward attaining the age of eighteen years, but the Minister may terminate the wardship before that date,

- (a) upon or at any time after the release of the ward from a training school; or
- (b) during the time that the ward is placed in a home.

s. 19,
re-enacted

8. Section 19 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor:

Designation
of foster
homes

19. The Minister or any employee of the Ministry designated in writing may designate any residential premises as a foster home for the purposes of this Act.

s. 20,
re-enacted

9. Section 20 of the said Act is repealed and the following substituted therefor:

Appre-
hension
of ward

20.—(1) A police officer, Area Administrator or person authorized by the Area Administrator who has reasonable and probable grounds to believe that a ward,

- (a) has left a training school without permission of the Area Administrator;
- (b) has left a home without permission of the Area Administrator; or
- (c) has failed or refuses to return to a training school or home upon completion of authorized leave,

may, with or without a warrant, apprehend the ward and take the ward to a place of safety to be detained therein.

SECTION 8. The re-enactment of section 19 of the Act is complementary to the re-enactment of section 17.

SECTION 9. Section 20 currently reads as follows:

20. If a child sent to a training school escapes therefrom or neglects to attend thereat, he may, at any time before the termination of wardship, be apprehended without warrant and brought back to a training school.

The re-enacted section clarifies the grounds upon which a ward may be apprehended and indicates the procedure upon apprehension. The section provides that a ward may be detained in a place of safety after being apprehended but shall spend no longer than forty-eight hours in detention before being transferred or returned. The re-enacted section provides a power of search where a warrant has been obtained.

SECTION 10. Section 21 of the Act currently reads as follows:

21. Where a child leaves a home without the permission of the Minister or an officer of the Ministry designated in writing by the Minister, or refuses to return to the training school, he shall be deemed to have escaped from the training school.

The section is repealed because it is no longer necessary by reason of the re-enactment of section 20.

SECTION 11. Section 22 of the Act currently reads as follows:

22. Every person,

- (a) who aids or abets any child to escape from or unlawfully leave a training school or home;*
- (b) who knowingly harbours or conceals a child who has escaped from or unlawfully left a training school or home, without giving notice of the child's whereabouts to the training school or to the local police authorities; or*
- (c) who knowingly makes, or procures to be made, any false statement in any return required under this Act,*

is guilty of an offence and on summary conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than three months, or to both.

The re-enactment of section 22 is complementary to the re-enactment of section 20.

(2) A ward who is detained in a place of safety under sub-section 1 shall be, Return of ward

- (a) returned to the training school or home from which the ward was absent; or
- (b) transferred to a training school or home pursuant to an order made under subsection 3 of section 17,

as soon as possible, but no later than forty-eight hours after being detained therein.

(3) A warrant referred to in subsection 1 may be issued by a justice of the peace where the justice is satisfied on information laid before the justice on oath that the applicant has authority under subsection 1 to apprehend a ward. Warrant

(4) Where a person authorized by a warrant issued under subsection 3 has reasonable and probable grounds to believe that the ward who is the subject of the warrant is on any premises, the person may enter the premises, if need be by force, and search for and remove the ward from the premises. Search

10. Section 21 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed. s. 21, repealed

11. Section 22 of the said Act is repealed and the following substituted therefor: s. 22, re-enacted

22. Every person,

Penalties

- (a) who aids or abets any ward to leave a training school or a home without permission of the Area Administrator;
- (b) who knowingly harbours or conceals a ward who has left a training school or a home without permission of the Area Administrator or who has failed or refuses to return to a training school or home upon completion of authorized leave; or
- (c) who knowingly makes, or procures to be made, any false statement in any return required under this Act,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than three months, or to both.

s. 22a,
enacted

- 12.** The said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is further amended by adding thereto the following section:

Agreements

22a. The Minister may enter into agreements with any person upon such terms and conditions as may be agreed for the provision of residential and other services to or on behalf of Crown wards.

s. 23 (b),
re-enacted

- 13.**—(1) Clause *b* of section 23 of the said Act is repealed and the following substituted therefor:

(*b*) regulating the conduct, discipline, rights and privileges of Crown wards under this Act;

(*ba*) designating training schools or classes of training schools for the purposes of this Act and the regulations.

s. 23 (c),
re-enacted

- (2) Clause *c* of the said section 23 is repealed and the following substituted therefor:

(*c*) governing the accommodation, facilities, equipment, training, treatment and other services to be provided in training schools.

s. 23 (*g, h, i*),
re-enacted

- (3) Clauses *g, h* and *i* of the said section 23 are repealed and the following substituted therefor:

(*g*) requiring training schools and homes to provide such information as is prescribed and prescribing the persons to whom such information shall be provided;

(*h*) prescribing the number of members and duties of The Training Schools Advisory Board in addition to those duties mentioned in section 6;

(*i*) governing the powers and duties of superintendents and members of the staff of training schools and homes and prescribing the qualifications of members of homes and training schools.

s. 23.
amended

- (4) The said section 23 is amended by adding thereto the following clauses:

(*l*) for the purposes of this Act and the regulations, defining “residential services” and “other services” and prescribing classes of services;

SECTION 12. The new section 22*a* permits the Minister to make agreements to purchase residential and other services.

SECTION 13. Section 23 of the Act is amended to include additional regulation making authority as well as revise existing regulation powers. Clause *b* permits the Lieutenant Governor in Council to make regulations concerning the rights and privileges of Crown wards. Clause *g* governs the reporting of information by training schools. The amendment to clause *h* is complementary to the re-enactment of subsection 1 of section 6. Clause *l* is complementary to the new section 22*a*.

(m) prescribing the classes of payments by way of provincial aid to any home or training school or class thereof and the methods of determining the amounts of payments and providing for the manner and time of payment and the terms and conditions for the payment thereof and the suspension and withholding of payments and for the making of deductions from payments.

- 14.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment
- 15.** The short title of this Act is *The Training Schools Amendment Act, 1978*. Short title

BILL 113

An Act to amend
The Training Schools Act

1st Reading

June 8th, 1978

2nd Reading

3rd Reading

THE HON. KEITH C. NORTON
Minister of Community and
Social Services

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to amend The Training Schools Act

LIBRARY
OCT 8 1978
THE HON. KEITH C. NORTON
Minister of Community and Social Services

(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

SECTION 1. Section 1 of the Act is amended by adding a definition of "Area Administrator" and of "place of safety". The definition of "home" is amended to clarify that it includes homes under contract with the Ministry. The definition of "parent" is enlarged to include a guardian and a person with a settled intention to treat the child as a member of the person's own family and is consistent with *The Family Law Reform Act, 1978*.

An Act to amend The Training Schools Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *a* of section 1 of *The Training Schools Act*, being ^{s. 1 (a),} chapter 467 of the Revised Statutes of Ontario, 1970, ^{re-enacted} as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor:

(a) “Area Administrator” means one or more employees of the Ministry appointed by the Minister as an Area Administrator for the purposes of this Act.

- (2) Clause *c* of the said section 1 is repealed and the following ^{s. 1 (c),} substituted therefor: ^{re-enacted}

(c) “home” means a parental home, foster home or a home where residential services and other services are provided under an agreement with the Minister.

- (3) The said section 1, as amended by the Statutes of Ontario, ^{s. 1,} 1977, chapter 22, section 1, is further amended by ^{amended} adding thereto the following clause:

(fa) “Ministry” means the Ministry of Community and Social Services.

- (4) Clause *h* of the said section 1 is amended by adding at ^{s. 1 (h),} the end thereof “and includes a guardian or a person ^{amended} who has demonstrated a settled intention to treat the child as a child of the person’s family but does not include a person who exercises the rights and duties of a legal guardian under section 17”.

- (5) The said section 1 is further amended by adding thereto ^{s. 1,} the following clause: ^{amended}

SECTION 5. Subsection 1 of section 12 of the Act currently reads as follows:

- (1) *Where a judge orders that a child be sent to a training school, the judge shall cause a copy of the evidence taken before him to be sent to the superintendent of the training school and a copy to be sent to the Ministry.*

The re-enactment of the provision is complementary to the re-enactment of section 9.

SECTION 6. Section 16 of the Act requiring a probation officer or person designated by a judge to take a child to a training school is repealed in order to enable other persons to take a child to a training school. A new section 16 is substituted to provide for the appointment of Area Administrators.

SECTION 7. The re-enacted section 17 of the Act contains provisions governing the guardianship of children who are made wards of the Crown under the Act. The rights and duties of the Crown as legal guardian shall be exercised by an Area Administrator. Provision is made for the Minister or Area Administrator to place the ward in a training school or home and to transfer and release a ward. The wardship of the Crown expires when the ward attains eighteen years of age unless the Minister terminates the wardship before that date.

11. The judge, in an order made under section 9, shall state, where practicable, the name, age and religious faith of the child. Contents
of order

5. Subsection 1 of section 12 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor: s. 12 (1),
re-enacted

(1) Where a judge makes an order under section 9, the judge shall cause a copy of the evidence taken before the judge to be sent to the Area Administrator referred to in subsection 1 of section 17. Copy of
evidence
to
Area
Adminis-
trator

6. Section 16 of the said Act is repealed and the following substituted therefor: s. 16,
re-enacted

16.—(1) The Minister may appoint one or more persons to act as an Area Administrator. Area
Adminis-
trator

(2) An Area Administrator shall, Duties of
Area
Adminis-
trator

(a) supervise the management and operation of training schools and homes;

(b) direct the training, treatment, care and control of children who are made wards of the Crown under this Act;

(c) perform such other duties and functions as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council.

(3) Any or all of the powers, duties and functions conferred, imposed upon or exercised by an Area Administrator by or under this Act may be delegated by the Area Administrator to any person or class of persons for the purpose of the effective administration of this Act and each delegation may be in respect of any or all training schools, homes or wards of the Crown under the authority of the Area Administrator and shall be subject to such limitations, restrictions, conditions and requirements as the Area Administrator considers necessary for the purpose. Delegation

7. Section 17 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor: s. 17,
re-enacted

17.—(1) Where a child is made a ward of the Crown and committed to the care of the Minister by order of a judge Crown
wardship

under section 9, the Crown has and shall assume all the rights and duties of a legal guardian of such child and the rights and duties of the Crown in respect of the child shall be exercised by the Area Administrator for the area where the judge who made the order presides unless the Minister, by order, designates another Area Administrator for the purpose.

Rights of
parents
and other
guardians

(2) During the period that a child is a ward of the Crown under this Act, the rights and duties of the child's parents or other guardians in respect of the care, custody and control of the child are suspended.

Transfer,
release
of ward

(3) Where a child is made a ward of the Crown under this Act, the Minister or the Area Administrator who exercises the rights and duties of the Crown in respect of the child shall, by order, place the ward in a training school or home, and may, from time to time,

- (a) transfer the ward from one training school to another or to a home;
- (b) transfer the ward from one home to another or to a training school; or
- (c) release the ward from a training school or a home upon such conditions as the Minister or the Area Administrator thinks fit,

and where an order is made under clause *a*, *b* or *c*, the order shall indicate the Area Administrator who shall exercise the rights and duties referred to in subsection 1.

Expiry,
termination
of wardship

(4) The wardship of the Crown expires upon the ward attaining the age of eighteen years, but the Minister may terminate the wardship before that date,

- (a) upon or at any time after the release of the ward from a training school or a home; or
- (b) during the time that the ward is placed in a home.

s. 19.
re-enacted

8. Section 19 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor:

Designation
of foster
homes

19. The Minister or any employee of the Ministry designated in writing by the Minister may designate any residential premises as a foster home for the purposes of this Act.

SECTION 8. The re-enactment of section 19 of the Act is complementary to the re-enactment of section 17.

SECTION 9. Section 20 currently reads as follows:

20. If a child sent to a training school escapes therefrom or neglects to attend thereat, he may, at any time before the termination of wardship, be apprehended without warrant and brought back to a training school.

The re-enacted section clarifies the grounds upon which a ward may be apprehended and indicates the procedure upon apprehension. The section provides that a ward may be detained in a place of safety after being apprehended but shall spend no longer than forty-eight hours in detention before being transferred or returned. The re-enacted section provides a power of search where a warrant has been obtained.

SECTION 10. Section 21 of the Act currently reads as follows:

21. Where a child leaves a home without the permission of the Minister or an officer of the Ministry designated in writing by the Minister, or refuses to return to the training school, he shall be deemed to have escaped from the training school.

The section is repealed because it is no longer necessary, by reason of the re-enactment of section 20.

SECTION 11. Section 22 of the Act currently reads as follows:

22. Every person,

- (a) who aids or abets any child to escape from or unlawfully leave a training school or home;*
- (b) who knowingly harbours or conceals a child who has escaped from or unlawfully left a training school or home, without giving notice of the child's whereabouts to the training school or to the local police authorities; or*
- (c) who knowingly makes, or procures to be made, any false statement in any return required under this Act,*

is guilty of an offence and on summary conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than three months, or to both.

The re-enactment of section 22 is complementary to the re-enactment of section 20.

9. Section 20 of the said Act is repealed and the following substituted therefor: <sup>s. 20,
re-enacted</sup>

20.—(1) A police officer, Area Administrator or person <sup>Appre-
hension
of ward</sup> authorized by the Area Administrator who has reasonable and probable grounds to believe that a ward,

- (a) has left a training school without permission of the Area Administrator;
- (b) has left a home without permission of the Area Administrator or a person responsible for supervision in the home; or
- (c) has failed or refuses to return to a training school or home upon completion of authorized leave,

may, with or without a warrant, apprehend the ward and take the ward to a place of safety to be detained therein.

(2) A ward who is detained in a place of safety under sub- <sup>Return
of ward</sup> section 1 shall be,

- (a) returned to the training school or home from which the ward was absent; or
- (b) transferred to a training school or home pursuant to an order made under subsection 3 of section 17,

as soon as possible, but no later than forty-eight hours after being detained therein.

(3) A warrant referred to in subsection 1 may be issued by ^{Warrant} a justice of the peace where the justice is satisfied on information laid before the justice on oath that the applicant has authority under subsection 1 to apprehend a ward.

(4) Where a person authorized by a warrant issued under ^{Search} subsection 3 has reasonable and probable grounds to believe that the ward who is the subject of the warrant is on any premises, the person may enter the premises, if need be by force, and search for and remove the ward from the premises.

10. Section 21 of the said Act, as amended by the Statutes of <sup>s. 21,
repealed</sup> Ontario, 1977, chapter 22, section 1, is repealed.

11. Section 22 of the said Act is repealed and the following substituted therefor: <sup>s. 22,
re-enacted</sup>

Penalties

22. Every person,

- (a) who aids or abets any ward to leave a training school or a home without permission of the Area Administrator or a person responsible for supervision in the home;
- (b) who knowingly harbours or conceals a ward who has left a training school or a home without permission of the Area Administrator or a person responsible for supervision in the home or who has failed or refuses to return to a training school or home upon completion of authorized leave; or
- (c) who knowingly makes, or procures to be made, any false statement in any return required under this Act,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

s. 22a,
enacted

- 12.** The said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is further amended by adding thereto the following section:

Agreements

22a. The Minister may enter into agreements with any person upon such terms and conditions as may be agreed for the provision of residential and other services to or on behalf of Crown wards.

s. 23 (b),
re-enacted

- 13.**—(1) Clause *b* of section 23 of the said Act is repealed and the following substituted therefor:

- (b) governing the conduct, discipline, rights and privileges of Crown wards under this Act;
- (ba) designating training schools or classes of training schools for the purposes of this Act and the regulations.

s. 23 (c),
re-enacted

- (2) Clause *c* of the said section 23 is repealed and the following substituted therefor:

- (c) governing the accommodation, facilities, equipment, training, treatment and other services to be provided in training schools.

SECTION 12. The new section 22*a* permits the Minister to make agreements to purchase residential and other services.

SECTION 13. Section 23 of the Act is amended to include additional regulation making authority as well as revise existing regulation powers. Clause *b* permits the Lieutenant Governor in Council to make regulations concerning the rights and privileges of Crown wards. Clause *g* governs the reporting of information by training schools. The amendment to clause *h* is complementary to the re-enactment of subsection 1 of section 6. Clause *l* is complementary to the new section 22*a*.

- (3) Clauses *g*, *h* and *i* of the said section 23 are repealed <sup>s. 23 (*g*, *h*, *i*),
re-enacted</sup> and the following substituted therefor:

- (*g*) requiring training schools and homes to provide such information as is prescribed and prescribing the persons to whom such information shall be provided;
- (*h*) prescribing the number of members and duties of The Training Schools Advisory Board in addition to those duties mentioned in section 6;
- (*i*) governing the powers and duties of Area Administrators, superintendents and members of the staff of training schools and homes and prescribing the qualifications of members of homes and training schools.

- (4) The said section 23 is amended by adding thereto the <sup>s. 23,
amended</sup> following clauses:

- (*l*) for the purposes of this Act and the regulations, defining "residential services" and "other services" and prescribing classes of services;
- (*m*) prescribing the classes of payments by way of provincial aid to any home or training school or class thereof and the methods of determining the amounts of payments and providing for the manner and time of payment and the terms and conditions for the payment thereof and the suspension and withholding of payments and for the making of deductions from payments;
- (*n*) establishing procedures providing for the review of decisions made under this Act affecting Crown wards.

14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

15. The short title of this Act is *The Training Schools Amendment Act, 1978*. Short title

BILL 113

An Act to amend
The Training Schools Act

1st Reading

June 8th, 1978

2nd Reading

June 19th, 1978

3rd Reading

THE HON. KEITH C. NORTON
Minister of Community and
Social Services

*(Reprinted as amended by the
Social Development Committee)*

BILL 113

2ND SESSION, 31ST LEGISLATURE, ⁴ONTARIO
27 ELIZABETH II, 1978 ⁷LC

An Act to amend The Training Schools Act

THE HON. KEITH C. NORTON
Minister of Community and Social Services



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 113

1978

An Act to amend The Training Schools Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *a* of section 1 of *The Training Schools Act*, being ^{s.1 (a),} chapter 467 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor:

(a) “Area Administrator” means one or more employees of the Ministry appointed by the Minister as an Area Administrator for the purposes of this Act.

- (2) Clause *c* of the said section 1 is repealed and the following ^{s.1 (c),} substituted therefor:

(c) “home” means a parental home, foster home or a home where residential services and other services are provided under an agreement with the Minister.

- (3) The said section 1, as amended by the Statutes of Ontario, ^{s.1,} 1977, chapter 22, section 1, is further amended by adding thereto the following clause:

(fa) “Ministry” means the Ministry of Community and Social Services.

- (4) Clause *h* of the said section 1 is amended by adding at ^{s.1 (h),} the end thereof “and includes a guardian or a person amended who has demonstrated a settled intention to treat the child as a child of the person’s family but does not include a person who exercises the rights and duties of a legal guardian under section 17”.

- (5) The said section 1 is further amended by adding thereto ^{s.1,} the following clause: amended

1978, c....

R.S.O. 1970,
c. 369

(ha) "place of safety" means a receiving home, foster home, hospital and such other place or class of places designated as places of safety under *The Child Welfare Act, 1978* and includes an observation and detention home established under *The Provincial Courts Act* but does not include a training school or any place in which adults are or may be imprisoned.

s. 6 (1),
re-enacted

2.—(1) Subsection 1 of section 6 of the said Act is repealed and the following substituted therefor:

Advisory
Board

(1) There shall be a board to be known as The Training Schools Advisory Board composed of such number of members as is prescribed by the regulations and the members of the Board shall be appointed by the Lieutenant Governor in Council and shall hold office during pleasure, and the Lieutenant Governor in Council may designate one of the members to be chairman of the Advisory Board.

s. 6 (6),
re-enacted

(2) Subsection 6 of the said section 6 is repealed and the following substituted therefor:

Allowance
as member
of the
Advisory
Board

(6) The Lieutenant Governor in Council shall fix a *per diem* allowance to be payable to each member of the Advisory Board and each member is entitled to be reimbursed for the member's reasonable and necessary travelling and living expenses for attendance at meetings and in the transaction of the business of the Advisory Board.

s. 9,
re-enacted

3. Section 9 of the said Act is repealed and the following substituted therefor:

Crown
ward

9. Where,

(a) a child has contravened any statute in force in Ontario which contravention would be punishable by imprisonment if committed by an adult; and

(b) the child is at least twelve years of age and under sixteen years of age,

a judge may order that the child be made a ward of the Crown and that the child be committed to the care of the Minister.

s. 11,
re-enacted

4. Section 11 of the said Act is repealed and the following substituted therefor:

11. The judge, in an order made under section 9, shall state, where practicable, the name, age and religious faith of the child. Contents
of order

5. Subsection 1 of section 12 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor: s. 12 (1),
re-enacted

(1) Where a judge makes an order under section 9, the judge shall cause a copy of the evidence taken before the judge to be sent to the Area Administrator referred to in subsection 1 of section 17. Copy of
evidence
to
Area
Adminis-
trator

6. Section 16 of the said Act is repealed and the following substituted therefor: s. 16,
re-enacted

16.—(1) The Minister may appoint one or more persons to act as an Area Administrator. Area
Adminis-
trator

(2) An Area Administrator shall, Duties of
Area
Adminis-
trator

(a) supervise the management and operation of training schools and homes;

(b) direct the training, treatment, care and control of children who are made wards of the Crown under this Act;

(c) perform such other duties and functions as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council.

(3) Any or all of the powers, duties and functions conferred, imposed upon or exercised by an Area Administrator by or under this Act may be delegated by the Area Administrator to any person or class of persons for the purpose of the effective administration of this Act and each delegation may be in respect of any or all training schools, homes or wards of the Crown under the authority of the Area Administrator and shall be subject to such limitations, restrictions, conditions and requirements as the Area Administrator considers necessary for the purpose. Delegation

7. Section 17 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor: s. 17,
re-enacted

17.—(1) Where a child is made a ward of the Crown and committed to the care of the Minister by order of a judge Crown
wardship

under section 9, the Crown has and shall assume all the rights and duties of a legal guardian of such child and the rights and duties of the Crown in respect of the child shall be exercised by the Area Administrator for the area where the judge who made the order presides unless the Minister, by order, designates another Area Administrator for the purpose.

Rights of
parents
and other
guardians

(2) During the period that a child is a ward of the Crown under this Act, the rights and duties of the child's parents or other guardians in respect of the care, custody and control of the child are suspended.

Transfer,
release
of ward

(3) Where a child is made a ward of the Crown under this Act, the Minister or the Area Administrator who exercises the rights and duties of the Crown in respect of the child shall, by order, place the ward in a training school or home, and may, from time to time,

- (a) transfer the ward from one training school to another or to a home;
- (b) transfer the ward from one home to another or to a training school; or
- (c) release the ward from a training school or a home upon such conditions as the Minister or the Area Administrator thinks fit,

and where an order is made under clause *a*, *b* or *c*, the order shall indicate the Area Administrator who shall exercise the rights and duties referred to in subsection 1.

Expiry,
termination
of wardship

(4) The wardship of the Crown expires upon the ward attaining the age of eighteen years, but the Minister may terminate the wardship before that date,

- (a) upon or at any time after the release of the ward from a training school or a home; or
- (b) during the time that the ward is placed in a home.

s. 19,
re-enacted

8. Section 19 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is repealed and the following substituted therefor:

Designation
of foster
homes

19. The Minister or any employee of the Ministry designated in writing by the Minister may designate any residential premises as a foster home for the purposes of this Act.

9. Section 20 of the said Act is repealed and the following substituted therefor: ^{s. 20, re-enacted}

20.—(1) A police officer, Area Administrator or person ^{Apprehension of ward} authorized by the Area Administrator who has reasonable and probable grounds to believe that a ward,

- (a) has left a training school without permission of the Area Administrator;
- (b) has left a home without permission of the Area Administrator or a person responsible for supervision in the home; or
- (c) has failed or refuses to return to a training school or home upon completion of authorized leave,

may, with or without a warrant, apprehend the ward and take the ward to a place of safety to be detained therein.

(2) A ward who is detained in a place of safety under subsection 1 shall be, ^{Return of ward}

- (a) returned to the training school or home from which the ward was absent; or
- (b) transferred to a training school or home pursuant to an order made under subsection 3 of section 17,

as soon as possible, but no later than forty-eight hours after being detained therein.

(3) A warrant referred to in subsection 1 may be issued by ^{Warrant} a justice of the peace where the justice is satisfied on information laid before the justice on oath that the applicant has authority under subsection 1 to apprehend a ward.

(4) Where a person authorized by a warrant issued under ^{Search} subsection 3 has reasonable and probable grounds to believe that the ward who is the subject of the warrant is on any premises, the person may enter the premises, if need be by force, and search for and remove the ward from the premises.

10. Section 21 of the said Act, as amended by the Statutes of ^{s. 21, repealed} Ontario, 1977, chapter 22, section 1, is repealed.

11. Section 22 of the said Act is repealed and the following substituted therefor: ^{s. 22, re-enacted}

Penalties

22. Every person,

- (a) who aids or abets any ward to leave a training school or a home without permission of the Area Administrator or a person responsible for supervision in the home;
- (b) who knowingly harbours or conceals a ward who has left a training school or a home without permission of the Area Administrator or a person responsible for supervision in the home or who has failed or refuses to return to a training school or home upon completion of authorized leave; or
- (c) who knowingly makes, or procures to be made, any false statement in any return required under this Act,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

s. 22a,
enacted

12. The said Act, as amended by the Statutes of Ontario, 1977, chapter 22, section 1, is further amended by adding thereto the following section:

Agreements

22a. The Minister may enter into agreements with any person upon such terms and conditions as may be agreed for the provision of residential and other services to or on behalf of Crown wards.

s. 23 (b),
re-enacted

13.—(1) Clause *b* of section 23 of the said Act is repealed and the following substituted therefor:

- (b) governing the conduct, discipline, rights and privileges of Crown wards under this Act;
- (ba) designating training schools or classes of training schools for the purposes of this Act and the regulations.

s. 23 (c),
re-enacted

(2) Clause *c* of the said section 23 is repealed and the following substituted therefor:

- (c) governing the accommodation, facilities, equipment, training, treatment and other services to be provided in training schools.

- (3) Clauses *g*, *h* and *i* of the said section 23 are repealed <sup>s. 23 (*g*, *h*, *i*),
re-enacted</sup> and the following substituted therefor:

- (*g*) requiring training schools and homes to provide such information as is prescribed and prescribing the persons to whom such information shall be provided;
- (*h*) prescribing the number of members and duties of The Training Schools Advisory Board in addition to those duties mentioned in section 6;
- (*i*) governing the powers and duties of Area Administrators, superintendents and members of the staff of training schools and homes and prescribing the qualifications of members of homes and training schools.

- (4) The said section 23 is amended by adding thereto the <sup>s. 23,
amended</sup> following clauses:

- (*l*) for the purposes of this Act and the regulations, defining "residential services" and "other services" and prescribing classes of services;
- (*m*) prescribing the classes of payments by way of provincial aid to any home or training school or class thereof and the methods of determining the amounts of payments and providing for the manner and time of payment and the terms and conditions for the payment thereof and the suspension and withholding of payments and for the making of deductions from payments;
- (*n*) establishing procedures providing for the review of decisions made under this Act affecting Crown wards.

14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. <sup>Commence-
ment</sup>

15. The short title of this Act is *The Training Schools Amendment Act, 1978*. ^{Short title}

An Act to amend
The Training Schools Act

1st Reading

June 8th, 1978

2nd Reading

June 19th, 1978

3rd Reading

November 30th, 1978

THE HON. KEITH C. NORTON
Minister of Community and
Social Services

BILL 114

Government Bill

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to revise The Child Welfare Act

THE HON. KEITH C. NORTON
Minister of Community and Social Services

TORONTO

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EXPLANATORY NOTES

The purpose of the Bill is to repeal, up-date and extend the application of *The Child Welfare Act*.

Some features of the Bill are as follows:

1. *Best Interest Test*

A definition of "best interest" has been included for use by judges as a criterion in choosing among the various orders of disposition that can be made in protection hearings. (s. 1 (b))

2. *Society Budgets*

Provision is made to allow the Ministry to establish the amount of a society budget, where the budget has not been submitted or where municipal approval has not been given within the prescribed periods of time. (ss. 8 to 12)

3. *Capital Grants Payable to Societies*

The discretion of the Ministry to determine the amount of capital grants payable to societies is broadened by deleting minimum percentages prescribed in the Act. (s. 14)

4. *Definition of "Parent"*

For the purposes of determining which parent should be notified of protection hearings and those natural parents whose consents are required for adoption, the existing definitions will be changed to include a wider category of putative fathers. The new definitions bring this legislation into line with the provisions of *The Children's Law Reform Act, 1978*. The existing right of the court to dispense with notice of hearing in protection proceedings on a putative father where the putative father can be located will be deleted. (s. 19 (1) (e)) (s. 63 (1) (c))

5. *"Place of Safety"*

"Place of Safety" is re-defined to ensure that a child who is apprehended is kept in a place supervised or approved by a Director of Child Welfare until the child can be brought before a court. The new definition excludes training schools. (s. 19 (1) (f))

6. *Transfer of Proceedings to Another Court*

The court where a child is taken into care may transfer the proceedings to a family court in another territorial jurisdiction where a "preponderance of convenience" can be shown. (s. 19 (3))

7. *Independent Legal Representation of Children*

The court may direct that independent legal representation be provided for a child in protection proceedings. (s. 20)

8. *Apprehension of Children*

A person or agency other than a society may apply to a court and the court may order a society to apprehend a child apparently in need of protection and to bring the child before a court where the matter has previously been reported to the society and the society either refused or delayed taking steps to apprehend the child. (s. 22 (2))

21. *Appeals in Protection Proceedings*

Most of the procedural requirements relating to appeals from orders of a family court in protection proceedings have been deleted. It is intended to include these requirements in the rules of the court. (s. 40)

A society's right to retain custody of a child pending the hearing of the appeal is clarified, but the appeal judge may make an order for temporary custody of the child by some other person or agency. (s. 40 (2-5))

The prescribed period for commencing an appeal from a decision relating to Crown wardship cannot be extended by the appeal court after the ward is placed for adoption. (s. 40 (6))

22. *Child Abuse*

A definition of "abuse" is added for reporting purposes. (s. 44 (1))

The reporting of child abuse by those receiving information in their professional or official capacity is made mandatory with penalties for non-compliance. The more general requirement for anyone to report abuse and other forms of neglect will be retained but without a penalty. (s. 45 (1, 2))

The Official Guardian and, in the case of a child in the care of a society, a children's aid society, will be given authority to bring legal proceedings on behalf of a child suffering abuse to recover damages or other compensation. Such proceedings will be brought only if such proceedings are considered to be in the best interests of the child. (s. 45 (4))

The maximum age limit of ten for a child who is left unattended has been removed from the Act but the onus of establishing that reasonable supervision has been provided for a child under 10 years of age who was left unattended is on the accused. (s. 44 (3, 5))

23. *Abuse Registry*

A provincial abuse registry for receiving reports from societies is established under the control of a Director of Child Welfare appointed by the Minister. Access to the registry would be restricted to specific agencies and persons. Suspected abusers whose names appear in the registry will be notified and will be given an opportunity to inspect and seek correction or expungement of information in the registry. An appeal to the courts is given from a refusal by the Director to amend the registry. Information identifying those who report child abuse to a society would be excluded from the registry. The records relating to the registry would not be admissible in any other court proceedings. (s. 46)

24. *Curfew and Street Trades*

The existing prohibition against boys between 12 and 16 years of age from engaging in street trades at night has been extended to cover all children under the age of 16 years. (s. 48)

25. *Access to a Hearing by Public and News Media*

The provisions of the Act that exclude the public and others from court hearings in protection cases are re-enacted to allow an expanded range of exceptions to be made to this general rule, in particular, the

Press and other communication media are given the right to have at least two representatives in any court hearing under this Part, unless the presiding judge excludes them, and the judges must give reason for such exclusion.

The prohibition against publishing information that would identify the parent or child at a hearing is extended to cover any member of the child's family and to anybody charged with a criminal offence under this Part.

These restrictions will also apply to tribunals hearing appeals under this Part. (s. 51)

26. *Licensing of Adoption Agencies and Adoption Placements*

- (a) All placements for adoption, except for adoption by close relatives and step-parents, will have to be routed through adoption agencies or children's aid societies. All adoption agencies that place children for the purposes of adoption (other than children's aid societies) are required to be licensed. (ss. 54 to 59)
- (b) The approval of a Director is required *prior* to the placement of any child under 18 years of age for the purpose of adoption, except placements with close relatives or placements by societies. The Director shall in such cases require a homestudy before a placement is made. (s. 59 (3-6))
- (c) The Director may intervene where any person has been refused placement for adoption or a child placed with the person for adoption has been removed by an adoption agency. (s. 60)
- (d) Unauthorized interference with a child who is on adoption placement is made an offence. (ss. 63 (14), 86 (1) (f) (vi))

27. *Adoption Consents*

- (a) A consent to adoption by a natural parent who is a minor is required to have the approval of the Official Guardian. (s. 63 (13))
- (b) Where a child is placed for adoption through an adoption agency with the consent of the natural parents, guardianship of the child will vest in the agency when the consent is given and the consent may not be withdrawn and the adoption may proceed without further notice to the natural parents. However, the Director must, once a year, review the status of each child placed for adoption through an adoption agency where the adoption has not yet been completed, and after any such review, the Director may,
 - (i) confirm the placement,
 - (ii) send the child back to his or her natural parents, or
 - (iii) direct that the child be placed with a children's aid society and that the society apply for Crown wardship. The natural parents will have notice of the application for Crown wardship in such circumstances. (s. 63 (11))

28. *Adoption Orders*

- (a) The jurisdiction to make adoption orders is transferred from the county court to the Provincial Court (Family Division). (s. 65)

- (b) A homestudy and a Director's statement before an adoption order is made will no longer be required where the proposed adoption is by a close relative or by a step-parent unless the judge making the order otherwise directs. (s. 69 (5))
- (c) An adoption order is final and irrevocable subject only to the statutory appeal. (s. 76)
- (d) A statutory right of appeal is given against an adoption order or a refusal to make an order but no extension of statutory time required for filing the appeal can be granted. (s. 77)
- (e) The grounds for granting an adoption order for an adult have been broadened. This would allow, at the discretion of the court, the adoption of an adult with a developmental handicap by a family who have been caring for that person. (s. 68)

29. *Adoption Subsidy*

The Minister may grant a subsidy to an adopting parent. (s. 81)

30. *Interprovincial Agreements*

The Minister is authorized to enter into agreements on behalf of the Province with other provinces relating to the care of children. (s. 83)

BILL 114

1978

An Act to revise The Child Welfare Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1. In this Act,

Interpre-
tation

- (a) "approved estimate" means an estimate of net expenditures of a society finally approved under sections 8 to 12;
- (b) "best interests of the child" means the best interests of the child in the circumstances having regard, in addition to all other relevant considerations, to
 - (i) the mental, emotional and physical needs of the child and the appropriate care or treatment, or both, to meet such needs,
 - (ii) the child's opportunity to enjoy a parent-child relationship and to be a wanted and needed member within a family structure,
 - (iii) the child's mental, emotional and physical stages of development,
 - (iv) the effect upon the child of any disruption of the child's sense of continuity,
 - (v) the merits of any plan proposed by the agency that would be caring for the child, compared with the merits of the child remaining with his or her parents,
 - (vi) the views and preferences of the child, where such views and preferences can reasonably be ascertained,

- (vii) the effect upon the child of any delay in the final disposition in the proceedings;
- (c) “court”, unless otherwise indicated, means a provincial court (family division) or the Unified Family Court;
- (d) “Director” means an employee of the Ministry appointed by the Minister as a director for all or any of the purposes of this Act;
- (e) “judge”, unless otherwise indicated, means a provincial judge presiding in a provincial court (family division) or in the Unified Family Court;
- (f) “local director” means the local director of a society appointed under this Act;
- (g) “Minister” means the Minister of Community and Social Services;
- (h) “Ministry” means the Ministry of Community and Social Services;
- (i) “municipality” means the corporation of a county, city, or separated town or a district, metropolitan or regional municipality, but does not include a city or separated town in a district, metropolitan or regional municipality, and in a territorial district means the corporation of a city, town, village or improvement district;
- (j) “prescribed” means prescribed by the regulations;
- (k) “regulations” means the regulations made under this Act;
- (l) “society” means a children’s aid society approved by the Lieutenant Governor in Council under this Act. R.S.O. 1970, c. 64, s. 1; 1972, c. 1, s. 19 (3); 1975, c. 1, s. 1, *amended*.

PART I

OFFICERS, SOCIETIES

Appointment
of Director

2.—(1) The Minister may appoint one or more persons to act as a Director. *New.*

Duties of
Director

(2) A Director,

- (a) shall advise and supervise societies;
- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;

- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of any place in which a child in the care of a society is placed;
- (e) shall prepare and submit an annual report to the Minister;
- (f) shall keep books of account of all moneys received and disbursed by the Director;
- (g) may designate in writing a place or class of places as a place of safety for the purposes of this Act;
- (h) shall perform such other duties as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council. R.S.O. 1970, c. 64, s. 2 (1), *amended*.

(3) Where a Director is absent or there is a vacancy in the office of a Director, the powers and duties of the Director shall be exercised and performed by such employee of the Ministry as the Minister designates. R.S.O. 1970, c. 64, s. 2 (3), *amended*. Acting Director

3.—(1) The Minister may by order appoint a judge of the county or district court to make an investigation into any matter, Investigation

- (a) relating to any person in the care of a society; or
- (b) for the due administration of this Act,

and the person appointed shall report the result of the investigation to the Minister. R.S.O. 1970, c. 64, s. 3 (1); 1975, c. 1, s. 3, *amended*.

(2) For the purposes of an investigation under subsection 1, the judge has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1970, c. 64, s. 3 (2); 1971, c. 49, s. 18. Powers on investigation
1971, c. 49

4.—(1) Every society shall appoint a local director who shall be responsible to the board of directors of the society for the administration and enforcement of this Act and the regulations in the area in which the society has jurisdiction, who shall co-operate with a Director to this end and who Appointment of local directors

shall carry out such other duties as are required by the constitution, by-laws and directions of the society.

Powers
of local
directors,
etc.

1974, c. 109

R.S.O. 1970,
c. 374

(2) Every local director and every person designated by the board of directors of a society has for the purposes of this Act the powers of a school attendance counsellor under *The Education Act, 1974* and a police officer, and any one of them shall be deemed to be an officer within the meaning of section 10 of *The Public Authorities Protection Act*, and that section and the other provisions of that Act apply to them in the same manner and to the same extent as they do to the officers mentioned in that section. R.S.O. 1970, c. 64, s. 4, *amended*.

Police
assistance

5. A Director or a local director or any person acting under the authority of either of them may call for aid, in the performance of the duties of the Director, local director or the person, as the case may be, a member of the police force responsible for policing the area in which the aid is required. R.S.O. 1970, c. 64, s. 5, *amended*.

Establish-
ment of
societies
R.S.O. 1970,
c. 89

6.—(1) Every society shall be incorporated under *The Corporations Act* or a predecessor thereof as a corporation without share capital and shall be approved by the Lieutenant Governor in Council.

Purposes

- (2) Every society shall be operated for the purposes of,
- (a) investigating allegations or evidence that children may be in need of protection;
 - (b) protecting children where necessary;
 - (c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
 - (d) providing care for children assigned or committed to its care under this or any other Act;
 - (e) supervising children assigned to its supervision under this or any other Act;
 - (f) placing children for adoption;
 - (g) assisting the parents of children born or likely to be born outside of marriage and their children born outside of marriage; and

(h) any other duties given to it by this or any other Act. R.S.O. 1970, c. 64, s. 6 (1, 2), *amended*.

(3) Every society shall provide at least the standard of services prescribed by the regulations. Standard of services

(4) The by-laws of every society shall contain such provisions as the regulations prescribe, and a certified copy of the by-laws and any amendments thereto shall be filed with a Director forthwith after they are made, and no such by-laws or amendments shall come into operation until they have been approved by the Minister. R.S.O. 1970, c. 64, s. 6 (3, 4). By-laws

7.—(1) A society shall be governed by a board of directors composed of such municipal representatives as are determined under subsections 2 to 6 and the president, one or more vice-presidents, the secretary, the treasurer and such other officers and members as are determined, elected in such manner and for such period as the by-laws of the society provide. Board of directors

(2) Where a society has jurisdiction in but not outside a city, separated town or a district, regional or metropolitan municipality, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the city, separated town or the district, regional or metropolitan municipality. Municipal representatives

(3) Where a society has jurisdiction in a county but not in a city or separated town, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the county. Idem

(4) Where a society has jurisdiction in an area that includes a county or part of a county outside a city, separated town or a district, regional or metropolitan municipality, Idem

(a) one municipal representative shall be appointed from among themselves by the council of each county, city, separated town and the district, regional or metropolitan municipality in the jurisdiction; and

(b) the council of the county, city, separated town or the district, regional or metropolitan municipality having the largest population as determined by the last revised assessment rolls shall appoint from among themselves such other municipal representa-

tives as are required, so that the total number of municipal representatives on the board of directors is not fewer than four.

Idem

(5) In subsections 2 to 4, a reference to a city or separated town does not include a city or separated town in a district, regional or metropolitan municipality.

Idem

(6) Where a society has jurisdiction in an area that includes a district or part of a district outside a city or a district, regional or metropolitan municipality, the municipal representatives shall be appointed in the manner determined under subsection 4, except that the district welfare administration board or the District Child Welfare Budget Board referred to in section 10, as the case may be, shall appoint the representatives required by subsection 4 to be appointed by the council of a county.

Executive committee

(7) The board of directors of a society shall pass a by-law providing for the election from among their number of an executive committee of nine members, consisting of the president, the treasurer, four municipal representatives and three other directors, and delegating to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the board.

Quorum

(8) A majority of the members of an executive committee constitutes a quorum. R.S.O. 1970, c. 64, s. 7, *amended*.

Estimate of expenditures

8.—(1) Every society shall before a date to be fixed each year by a Director, which date shall be no later than the last day of February in the year next following, prepare and file with the Director and, subject to subsection 2 and section 10, with each municipality in the area in which the society has jurisdiction, an estimate of its net expenditures, determined in accordance with the regulations, for operations for the year next following.

Minister may determine estimate

(2) Where a society has not filed an estimate in accordance with subsection 1 before the date prescribed therefor by the Director under that subsection, the Minister may at any time thereafter determine the amount of the estimate and cause the estimate to be filed with the society and, subject to subsection 3 of section 10, with each municipality in the area in which the society has jurisdiction.

Estimate deemed to be approved

(3) An estimate filed under subsection 2 shall, subject to subsections 1 and 2 of section 11, be deemed to be approved

by the Minister under subsection 1 of section 9, sixty days after it is filed.

(4) The council of every municipality with whom an estimate is filed in accordance with subsection 1 shall, subject to section 10 and subsection 1 of section 11, grant its approval to the estimate within sixty days from the date fixed by the Director. 1975, c. 1, s. 4, *part, amended*. Approval of estimate by council of municipality

(5) A municipality that has not, within the period of time fixed under subsection 4, Estimate deemed to be approved

(a) granted its approval to the estimate pursuant to subsection 4; or

(b) referred the estimate to a child welfare review committee under section 11,

shall, at the expiration of that period, be deemed to have granted its approval under subsection 4. *New*.

(6) Where a society has jurisdiction in more than one municipality, the portion of the estimate of net expenditures that is referable to each municipality shall, subject to subsection 10 of section 12, be determined in accordance with the regulations. 1975, c. 1, s. 4, *amended*. Proportion referable to each municipality

(7) Subsection 6 does not apply where a district welfare administration board has been established under *The District Welfare Administration Boards Act*. 1975, c. 1, s. 4, *part*. Exception R.S.O. 1970, c. 132

9.—(1) After an estimate has been filed with a Director pursuant to subsection 1 of section 8 and approved by the council of each municipality with whom it was filed, pursuant to subsection 4 of section 8, the Minister may approve the estimate as filed, or, subject to subsection 2 and subsection 2 of section 11, vary the amount of the estimate and approve the estimate as so varied. Approval by Minister

(2) Where the Minister intends to vary the amount of an estimate and to approve the estimate as so varied pursuant to subsection 1, the Minister shall, at least thirty days prior to approving the estimate, cause notice to be given of the Minister's intention to approve or to vary, as the case may be, to the society and to the council of each municipality in the area in which the society has jurisdiction or to the District Child Welfare Budget Board, as the case may be. 1975, c. 1, s. 5, *amended*. Notice by Minister

Interpre-
tation

10.—(1) In this section,

R.S.O. 1970,
c. 132

(a) “district” means a district as defined in *The District Welfare Administration Boards Act*;

(b) “municipality” means a municipality as defined in *The District Welfare Administration Boards Act*.
R.S.O. 1970, c. 64, s. 10 (1).

District
Child
Welfare
Budget
Board

(2) The councils of every municipality in a district in which a district welfare administration board has not been established shall, on or before the 1st day of October in each year, jointly appoint five persons to be a board known as the District Child Welfare Budget Board. R.S.O. 1970, c. 64, s. 10 (2); 1975, c. 1, s. 6 (1).

Approval of
estimates

(3) The estimate of net expenditures of a society in a district shall be approved by the District Child Welfare Budget Board in lieu of the approval by the municipal councils otherwise required by section 8. R.S.O. 1970, c. 64, s. 10 (3); 1975, c. 1, s. 6 (2), *amended*.

Reference
to child
welfare
review
committee

11.—(1) Where the council of a municipality or a District Child Welfare Budget Board does not agree with the amount of the estimate submitted to it by a society pursuant to subsection 1 of section 8 or with the portion of the estimate that is referable to the municipality, it may, on or before the expiration of the time fixed under subsection 4 of section 8 for the approval of the estimate by the municipality or the District Child Welfare Budget Board, as the case may be, request the Minister to refer the matter to a child welfare review committee. R.S.O. 1970, c. 64, s. 11 (1); 1975, c. 1, s. 7 (1), *amended*.

Idem

(2) Where a society, the council of a municipality or a District Child Welfare Budget Board, as the case may be, does not agree with the amount of the estimate,

(a) that has been filed pursuant to subsection 2 of section 8; or

(b) that the Minister intends to approve as varied pursuant to subsection 1 of section 9,

any one of them may,

- (c) in the case of an estimate referred to in clause *a*, before the expiration of sixty days after the filing of the estimate; and
- (d) in the case of an estimate referred to in clause *b*, after receiving notice of the Minister's intention pursuant to subsection 2 of section 9 and before the Minister's approval is given under subsection 1 of section 9,

request the Minister to refer the matter to a child welfare review committee. 1975, c. 1, s. 7 (2), *amended*.

(3) The provisions of subsection 2 apply with necessary ^{Idem} modifications to the council of a municipality or a District Child Welfare Budget Board that does not agree with the portion of the estimate referable to the municipality, where the estimate has been filed by the Minister pursuant to subsection 2 of section 8. *New*.

12.—(1) For the purposes of this section and section 11, ^{Composition of child welfare review committee} a child welfare review committee shall consist of,

- (a) one member appointed by the Minister, who shall be chairman;
- (b) one member appointed by the Ontario Association of Children's Aid Societies; and
- (c) one member appointed by the council of the municipality or the District Child Welfare Budget Board, as the case may be. R.S.O. 1970, c. 64, s. 11 (3), *amended*.

(2) Where a society has jurisdiction in more than one ^{Joint appointment to committee} municipality and there is no District Child Welfare Budget Board, the member to be appointed under clause *c* of subsection 1 shall be appointed jointly by those municipalities. R.S.O. 1970, c. 64, s. 11 (5), *amended*.

(3) Where the Minister receives a request under subsection 1 or 2 of section 11, the Minister shall forthwith appoint the member referred to in clause *a* of subsection 1 and cause notice to be given to the Ontario Association of Children's Aid Societies and the council of the municipality or the District Child Welfare Budget Board, as the case may be, to appoint, within ten days of the notice having been given, the members referred to in clauses *b* and *c* of subsection 1, respectively, and to inform the Minister forthwith of the names of the members appointed. *New*. ^{Appointment of members}

Notice

(4) The Minister shall, after being informed under subsection 3, forthwith cause notice of the names of the members of the child welfare review committee to be given to the parties concerned. R.S.O. 1970, c. 64, s. 11 (4), *amended*.

Failure to
appoint
member

(5) Where a party who receives a notice to appoint a member to the committee under subsection 3 fails to appoint a member within the time prescribed, the Minister shall, in the place of the party who failed to make the appointment, forthwith appoint the member to the committee. R.S.O. 1970, c. 64, s. 11 (6), *amended*.

Procedure

(6) A child welfare review committee shall be convened by the chairman thereof within ten days after all the members have been appointed and the committee shall determine its own procedures. R.S.O. 1970, c. 64, s. 11 (7), *amended*.

Evidence

(7) A child welfare review committee may receive such written or oral evidence from a Director, the society, the municipality or District Child Welfare Budget Board, as the case may be, or any other person as it in its discretion considers proper whether admissible in a court of law or not and may require the Director to present evidence and make submissions. R.S.O. 1970, c. 64, s. 11 (8), *amended*.

Idem

(8) A Director shall, when required by a child welfare review committee, present evidence and make submissions before the committee. *New*.

Findings of
committee

(9) A child welfare review committee shall review the evidence submitted to it and obtain any additional evidence or material it considers necessary and shall report its findings and make recommendations to the Minister within thirty days from the date that the committee first convenes and the findings and recommendations of the committee shall be made available to the parties concerned. R.S.O. 1970, c. 64, s. 11 (9).

Decision of
Minister

(10) After reviewing the findings and recommendations of a child welfare review committee, the Minister may approve the estimate filed under subsection 1 or 2 of section 8, vary the amount of the estimate and approve the estimate as so varied or determine the apportionment referred to in subsection 6 of section 8, as the case may be, and the decision of the Minister is final. R.S.O. 1970, c. 64, s. 11 (10), *amended*.

Notice

(11) Notice of the Minister's decision shall be given to the parties concerned within thirty days after the Minister receives the report and recommendations of a child welfare review committee. R.S.O. 1970, c. 64, s. 11 (11), *amended*.

13.—(1) There shall be paid out of the moneys appropriated therefor by the Legislature to each society an amount, determined in accordance with the regulations, of the approved estimate of the society. Payments by Ontario

(2) Every municipality shall pay to the society having jurisdiction in the municipality an amount, determined in accordance with the regulations, of the portion determined in accordance with subsection 6 of section 8, of the approved estimate of the society that is referable to the municipality. Payments by municipality

(3) Any amount payable to a society under this section in respect of an approved estimate, including advances before such estimate is approved, may be paid at such times and in such manner as are determined by the Minister. 1975, c. 1, s. 8, *amended*. Manner of payment

14.—(1) Where the erection, purchase or other acquisition of a building by a municipality or by a society for the occupation in whole or in part by the society for use for a purpose other than to provide facilities and services to meet such special needs of children as are prescribed for the purposes of section 16 has been approved by the Minister, the Minister may, out of the moneys appropriated therefor by the Legislature, direct payment to the municipality or to the society of an amount, determined in accordance with the regulations, of the cost to the municipality or society of the building determined in accordance with the regulations. Capital payments

(2) Where the Minister has approved the erection of a new building, an addition to an existing building, the purchase or other acquisition of an existing building, the structural alteration or the renovation or the furnishing and equipping of a building by a society for the provision of facilities and services to meet such special needs of children as are prescribed for the purposes of section 16, the Minister may direct payment to the society out of moneys appropriated therefor by the Legislature of an amount, determined in accordance with the regulations, towards the cost determined in accordance with the regulations of the new building, addition, acquisition, structural alteration, renovation or furnishing and equipping, as the case may be, that is applicable to the facilities and services. 1972, c. 109, s. 1, *amended*. Idem

15.—(1) The council of any municipality shall pass by-laws for the levying of such amounts as are necessary for the purpose of meeting any liability imposed on the municipality under this Act and may pass by-laws for the Power to make levies

purpose of affording to a society such other assistance as the council considers advisable.

When
society a
local board
R.S.O. 1970,
c. 324

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of *The Ontario Municipal Employees Retirement System Act* and not for any other purpose. R.S.O. 1970, c. 64, s. 15, *amended*.

Special
homes and
services

16. Where two or more societies have concurrent or contiguous jurisdictions they may with the approval of the Minister enter into an agreement establishing a joint committee for the purpose of providing facilities and services for the joint use of the societies to meet such special needs of children as are prescribed by the regulations, and sections 8 to 14 apply to the joint committee, for the purposes for which it was established, in the same manner as if the joint committee were a society. R.S.O. 1970, c. 64, s. 17, *amended*.

Temporary
board

17. Where, in the opinion of the Lieutenant Governor in Council, a society is not able to perform its duties, the Lieutenant Governor in Council may appoint a board of directors who shall be the board of directors of the society for such period as the Lieutenant Governor in Council considers advisable. R.S.O. 1970, c. 64, s. 18, *amended*.

Dissolution
of societies

18. The Lieutenant Governor in Council may, at any time upon the recommendation of the Minister, dissolve a society on such date as the order provides, and upon the dissolution of a society its property vests in the Crown to be held and disposed of in such manner as the Lieutenant Governor in Council determines. R.S.O. 1970, c. 64, s. 19, *amended*.

PART II

PROTECTION AND CARE OF CHILDREN

Interpre-
tation

19.—(1) In this Part and Part IV,

(a) "child" means a person actually or apparently under sixteen years of age, and in the case of a person who is the subject of an order under subsection 1 of section 29, includes a person under eighteen years of age;

(b) "child in need of protection" means,

- (i) a child who is brought, with the consent of the person in whose charge the child is, before a court to be dealt with under this Part,
- (ii) a child who is deserted by the person in whose charge the child is,
- (iii) a child where the person, in whose charge the child is, cannot for any reason care properly for the child, or where that person has died and there is no suitable person to care for the child,
- (iv) a child who is living in an unfit or improper place,
- (v) a child found associating with an unfit or improper person,
- (vi) a child found begging or receiving charity in a public place,
- (vii) a child where the person in whose charge the child is is unable to control the child,
- (viii) a child who without sufficient cause is habitually absent from home or school,
- (ix) a child where the person in whose charge the child is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for the child's health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or otherwise fails to protect the child adequately,
- (x) a child whose emotional or mental development is endangered because of emotional rejection or deprivation of affection by the person in whose charge the child is,
- (xi) a child whose life, health or morals may be endangered by the conduct of the person in whose charge the child is;

- (c) "developmental handicap" means a condition of mental impairment present or occurring during a person's formative years that is associated with limitations in adaptive behaviour;
- (d) "foster home" means a home, other than the home of the child's parent, in which a child is placed for care and supervision but not for the purposes of adoption;
- (e) "parent" includes,
 - (i) a guardian,
 - (ii) a person who has demonstrated a settled intention to treat a child as a child of the person's family, and
 - (iii) where a child is born outside marriage,
 - 1. a person who having acknowledged a parental relationship to the child, has voluntarily provided for the child's care and support,
 - 2. a person who pursuant to an order of a court of competent jurisdiction or a written agreement is under a legal duty to provide for the child or has been granted custody of or access to the child,
 - 3. a person who has made a written acknowledgment of the fact of his or her parentage to the society having or applying for the care or supervision of the child,

but does not include the Crown or a society;

- (f) "place of safety" means a receiving home, foster home, hospital, and such other place or class of places designated in writing by a Director, but does not include a training school under *The Training Schools Act*;
- (g) "receiving home" means an institution or home operated or supervised by a society for the temporary care of children. R.S.O. 1970, c. 64, s. 20 (1); 1972, c. 109, s. 2; 1975, c. 1, s. 12 (1-4), *amended*.

(2) Subject to subsection 3 and subsection 8 of section 30, an application in respect of a child under this Part shall be heard by a court in the county or district in which the child was taken into care. R.S.O. 1970, c. 64, s. 20 (2); 1975, c. 1, s. 12 (5), *amended*. By whom cases are to be heard

(3) Where the court in the county or district in which a child is taken into care is satisfied that there is a preponderance of convenience in favour of holding the hearing in respect of the child in another county or district, the court may, at any time after an application is made in respect of the child under this Part and before hearing the application, transfer the proceedings to a court in any other county or district. Transfer of proceedings

(4) For the purposes of an application under this Part, where the parent of a child is under eighteen years of age, the Official Guardian shall be the guardian *ad litem* of the parent with the duty of safeguarding the parent's interests before the court unless the court appoints any other person to be guardian *ad litem* for this purpose, and the court may make such order as to the costs of the guardian *ad litem* as the court considers just. R.S.O. 1970, c. 64, s. 20 (4); 1971, c. 98, s. 4, Sched., par. 6, *amended*. Guardian *ad litem*

20.—(1) Where a child is not represented by counsel at any stage in proceedings under this Part, if the court is of the opinion that representation is desirable, it may direct that legal representation be provided for the child. Legal representation for child

(2) In determining under subsection 1 whether representation of the child is desirable, the court shall, in addition to all other relevant considerations, have regard to, Idem

- (a) any difference in the views of the child and views of the society or of a parent of the child;
- (b) any difference in the interests of the child and the interests of the society or of a parent of the child;
- (c) the nature of the proceedings, including the seriousness and complexity of the issues and whether the society is requesting that the child be removed from the home of a parent of the child;
- (d) the capacity of the child to express his or her views to the court;

- (e) any order made under section 31 excluding the child from the hearing;
- (f) the views of the child regarding separate representation, where such views can reasonably be ascertained. *New.*

How child
in need of
protection
brought
before
court

21.—(1) A police officer, a Director, a local director or a person authorized by a Director or the local director, who has reasonable and probable grounds to believe that any child is apparently in need of protection, may,

- (a) without warrant take the child to a place of safety and detain the child there until the matter can be brought before a court; or
- (b) apply to a court for an order requiring the person in whose charge the child is to produce the child before a court at the time and place named in the order. R.S.O. 1970, c. 64, s. 21; 1975, c. 1, s. 13 (1), *amended.*

Idem

(2) A police officer, a Director, a local director or a person authorized by a Director or by a local director, who has reasonable and probable grounds to believe that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society, may without warrant take the child to a place of safety and detain the child there. *New.*

Right of
entry

(3) Where a person authorized under subsection 1 or 2 has reasonable and probable grounds to believe that a child referred to in subsection 1 or 2 is on any premises, the person may without warrant enter the premises, if need be by force, and without warrant search for and remove the child from the premises.

1971, c. 47,
not to apply

(4) The provisions of *The Statutory Powers Procedure Act, 1971* do not apply to proceedings under this section. 1975, c. 1, s. 13 (2), *amended.*

Warrant to
search for
child in
need of
protection

22.—(1) Where it appears to a justice of the peace, on information laid before the justice on oath,

- (a) that there are reasonable and probable grounds to believe that a child is in need of protection; or

- (b) that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society,

the justice may issue a warrant authorizing a police officer, a Director, a local director or a person authorized by a Director or the local director to search for the child and to take the child to and detain the child in a place of safety. R.S.O. 1970, c. 64, s. 22 (1); 1972, c. 109, s. 3; 1975, c. 1, s. 14, *amended*.

(2) Where, upon application to a court by any person, ^{Idem} the court is satisfied that there are reasonable and probable grounds to believe that a child is in need of protection and that the matter has been reported to a society and the local director of that society or person authorized by the local director has refused, or failed within a reasonable time, to apprehend the child or to apply to a court under section 21 or to apply for a warrant under subsection 1, the court may, after affording the society an opportunity to be heard,

- (a) make an order directing the local director of that society or person authorized by the local director, as the case may be, to search for the child and to take the child to and detain the child in a place of safety until the matter can be brought before a court; or

- (b) order a person in whose charge the child is to produce the child before a court at the time and place named in the order. *New*.

(3) A person authorized by a warrant issued under subsection 1 or an order made under clause *a* of subsection 2, may enter, if need be by force, any house, building or other place specified in the warrant or order and may search for and remove the child therefrom. ^{Right of entry}

(4) It is not necessary in an information or warrant under subsection 1 or an application or order under clause *a* of subsection 2 to describe the child by name. R.S.O. 1970, c. 64, s. 22 (2, 3). ^{Name not necessary}

23.—(1) In this section, “homemaker” means a person approved by the local director or a Director and who remains or is placed on a premises for the purpose of caring for a child. 1975, c. 1, s. 15, *part*. ^{Interpretation}

Homemaker
may remain
on premises

(2) Where it appears to a person entering a premises pursuant to section 21 or 22 that a child, who in the opinion of that person is unable to look after and care for himself or herself, has been temporarily left on the premises without proper or competent care or supervision and that a person having charge of the child is not available or is unable to consent to the placement of a homemaker on the premises, the person entering the premises, instead of taking the child to a place of safety, may,

(a) remain on the premises; or

(b) arrange with a society for the placement of a homemaker on the premises,

for the purpose of caring for the child and thereafter, subject to subsections 6, 7 and 8, the provisions of sections 26 to 34 apply with necessary modifications to the child. 1975, c. 1, s. 15, *part, amended*.

Idem

(3) A homemaker remaining or placed on a premises pursuant to subsection 2 may,

(a) enter and live on the premises; and

(b) carry on normal housekeeping activities on the premises,

in such manner and to such extent as is reasonably necessary to care for the child and may exercise reasonable control and discipline over the child.

Society or
Director may
provide goods
and services

(4) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society or a Director, as the case may be, may provide goods and services on the premises necessary to properly care for the child. 1975, c. 1, s. 15, *part*.

Protection
from
personal
liability

(5) A person who enters a premises pursuant to section 21 or 22 and who remains or is placed on a premises as a homemaker, pursuant to subsection 2 so long as the person is acting in good faith with reasonable care in the circumstances, is not liable for damages,

(a) for entering the premises;

(b) in connection with or arising out of the carrying on of normal housekeeping activities on the premises;

(c) for providing goods and services necessary to care for any child on the premises; or

- (d) for exercising reasonable control and discipline over any child on the premises. 1975, c. 1, s. 15, *part, amended.*

(6) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society shall forthwith notify or make reasonable efforts to notify the parent or other person having charge of the child, immediately before the homemaker entered the premises, of the placement of the homemaker on the premises. Notice to parent

(7) Notwithstanding subsection 1 of section 29, where an application is made to a court under section 27, the court may order the homemaker to withdraw from the premises or may confirm the placement or entry of the homemaker on the premises for a period as the court considers necessary or until a parent or a person having custody of the child returns to care for the child but, subject to subsection 8, not to exceed thirty days. 1975, c. 1, s. 15, *part.* Order of court

(8) Where a parent or person having custody of the child has not returned before the end of the period set out in the order referred to in subsection 7, a court may, upon application therefor either before or after the expiration of the period of the order, extend the period for such further period of time as the court considers necessary or after a further hearing may make an order under subsection 1 of section 29. 1975, c. 1, s. 15, *part, amended.* Extension of period of order

24. Where a child is in the care of an institution or home and no parent can be located, an officer of the institution or home after making reasonable efforts to locate a parent shall notify the society having jurisdiction in the area where the institution or home is located and the officer may, upon giving notice to the society, apply to a court that may determine that the child, notwithstanding clause *b* of subsection 1 of section 19, is a child in need of protection, and the provisions of sections 27 to 34 apply with necessary modifications to the child. R.S.O. 1970, c. 64, s. 23, *amended.* Child in institution

25.—(1) Subject to the approval of the society, where a parent through circumstances of a temporary nature is unable to make adequate provision for his or her child, the parent may voluntarily place the child into the care and custody of a society with jurisdiction in the area where the parent resides and, where the society agrees to receive the child into care and custody, the society shall enter into a written agreement with the parent for such care and custody for a period, subject to subsection 2, of six months or less. Temporary care by agreement

Extension
of
agreement

(2) Where a Director approves, the parties to an agreement under subsection 1 may agree to extend the agreement for a further period or periods of time that together with the first period shall not exceed twelve months, and the parties may agree to vary any other term or condition of the agreement that is not prescribed by the regulations.

Limitation
on agreement

(3) Notwithstanding subsections 1 and 2, in no case shall an agreement under subsection 1 or any extension of the agreement be made that results in a child being in the care and custody of a society,

(a) as a ward of the society;

(b) pursuant to an agreement under this section; or

(c) pursuant to an order for adjournment made under subsection 11 of section 27 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c* for a continuous period of more than twenty-four months.

Special
needs
agreement

(4) Subject to the approval of the society or the Minister, as the case may be, when a parent is unable to provide the services required by his or her child because of the special needs of the child, the parent may voluntarily place the child into the care and custody or under the supervision of a society with jurisdiction in the area where the parent resides or of the Crown, and where the society or the Minister, as the case may be, agrees to receive the child into care and custody or under supervision, the society or the Minister shall enter into a written agreement with the parent,

(a) for the placement of the child into the care and custody or under the supervision of the Crown or the society, as the case may be; or

(b) for the provision by the Minister or the society, as the case may be, of the services required to meet the special needs of the child,

or both, for such period or periods of time, subject to subsection 12, as may be agreed upon between the parties.
1975, c. 1, s. 15, *part*, *amended*.

Prohibition
on
placement

(5) No person shall place a child into the care or custody of a society and no society shall receive a child into its care or custody except,

- (a) where the child is detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22;
 - (b) where the care of the child is assumed under section 23;
 - (c) pursuant to an order under this Part or any other Act respecting the care or custody of the child;
 - (d) pursuant to an agreement under subsection 1 or 4;
 - (e) pursuant to the authority given under subsection 4 of section 40; or
 - (f) pursuant to a consent given under subsection 2 of section 63. *New.*
- (6) No agreement with a parent under this section is invalid by reason only of the fact that the parent entering into it is under eighteen years of age. 1975, c. 1, s. 15, *part.* Agreement not invalid by reason of age
- (7) The voluntary placement of or the provision of services to any child with a society pursuant to subsection 4 shall not be made without the consent of the Director. Consent of Director
- (8) Subject to subsection 9, no agreement under this section or extension thereof shall be entered into under this section in respect of a child twelve or more years of age without the written consent of the child and such consent, subject to subsection 13, shall not be withdrawn. Consent of child
- (9) The consent required under subsection 8 is not required where the child is not capable of giving the consent because of a developmental handicap determined in accordance with the regulations. Idem
- (10) No agreement under this section or any extension thereof shall extend beyond the eighteenth birthday of the person in respect of whom the agreement has been made. Age limit
- (11) A person sixteen or more years of age and under eighteen years of age may, with the approval of a Director, enter into an agreement under this section with the Minister or a society with jurisdiction in the area where the person resides with respect to the provision of services to such person by the Minister or the society, as the case may be. *New.* Agreements with respect to persons over sixteen years of age
- (12) Any party to an agreement made under this section other than a child and in respect of whom an agreement under Termination of agreement

this section was made, at any time during the period of the agreement or any extension thereof, may terminate the agreement by giving at least twenty-one days notice in writing to the other party or parties, as the case may be, and the agreement shall terminate on the expiration of the period set out in the notice. 1975, c. 1, s. 15, *part, amended*.

Idem

(13) A child who is twelve or more years of age and in respect of whom an agreement under this section was made, at any time during the period of the agreement or any extension thereof, upon giving notice in writing to the society, may seek a review of agreement by the society and where,

- (a) the existing agreement is not confirmed; and
- (b) no further agreement is reached,

by the parties within twenty-one days from the giving of the notice, the agreement shall be deemed to be terminated. *New*.

Return
of the
child

(14) Where an agreement under this section or an extension thereof,

- (a) is terminated under subsection 12, as soon as is practicable and within the time period set out in the notice given under that subsection;
- (b) is the subject of a review under subsection 13, upon the expiration of the twenty-one day period referred to in that subsection; or
- (c) expires pursuant to the terms of the agreement or pursuant to subsection 2, before or as soon as is practicable after the expiration thereof,

the society or the Minister, as the case may be, shall,

- (d) cause the child to be returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, but where there is an outstanding order for custody of the child, cause the child to be placed with the person entitled to custody of the child under the order; or
- (e) cause the matter to be brought before a court to determine whether the child is or would be, if left in the charge of or returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, as the case may be, a child in need of protection, and thereafter the provisions of sections 27

to 34 apply with necessary modifications to the child.
1975, c. 1, s. 15, *part, amended.*

(15) Subsection 14 does not apply to an agreement entered into under subsection 11. *New.* Application

26.—(1) As soon as is practicable and within five days of detaining a child in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, or of assuming the care of a child under section 23, as the case may be, Detention limited

- (a) the matter shall be brought before a court to determine whether the child is a child in need of protection; or
- (b) the child shall be returned to the parent or other person in whose charge the child was immediately prior to the child's apprehension or to the assumption of the child's care, as the case may be.

(2) Subsection 1 does not apply to a child placed or provided for pursuant to an agreement entered into under section 25. 1975, c. 1, s. 16, *amended.* Voluntary care or supervision

(3) A child who has been detained pursuant to subsection 2 of section 21 or clause *b* of subsection 1 of section 22 in an observation and detention home established or designated under *The Provincial Courts Act* that has been designated as a place of safety, shall, as soon as is practicable after the commencement of the detention, be brought before the court and the court shall make an order, Period of detention
R.S.O. 1970,
c. 369

- (a) confirming the child's detention for a period or periods that shall not in total exceed thirty days; or
- (b) discharging the child from the observation and detention home,

and upon completion of the period of detention or the discharge, as the case may be, the child shall be removed from the observation and detention home for transfer back into the care of the society. *New.*

27.—(1) Where a child who has been apprehended or produced before the court pursuant to section 21 or 22 is before the court, there shall be a hearing to determine whether or not the child is in need of protection, and before the court finds that the child is in need of protection, the court shall also determine the child's age, name, and, in the case of a child detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, the location where the child was taken into pro- Hearing to be held

tection and, subject to section 41, the religious faith of the child. 1975, c. 1, s. 17 (1), *amended*.

Witnesses

(2) The court, or upon the request of any party to the proceedings, a judge or a justice of the peace, has the power of summoning any person and requiring that person to attend before the court to testify and to produce such records, writings, documents and things as may be requisite, and the court has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce records, writings, documents and things as is vested in any court in civil cases. R.S.O. 1970, c. 64, s. 25 (2); 1975, c. 1, s. 17 (2), *amended*.

Who may be heard

(3) The court may hear any person with evidence relevant to the hearing including the child, a parent of the child, a foster parent of the child, the local director of a society or any person appearing on behalf of any of them, any person authorized by the board of directors of the society on behalf of the society, the clerk of a municipality or any person authorized by the council of the municipality on behalf of the municipality, and a district director of the Ministry or any person authorized by the Minister on behalf of Ontario. R.S.O. 1970, c. 64, s. 25 (3); 1972, c. 1, s. 19 (3), *amended*.

Evidence

R.S.O. 1970,
c. 151

(4) Notwithstanding any privilege or protection afforded under *The Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care and the court may, upon such proof as the court may require, admit into evidence any statement or report whether oral or written, including any transcript, exhibit or finding in a prior proceeding whether civil or criminal that the court considers relevant to such consideration.

Affidavit evidence

(5) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. *New*.

Notice

(6) The court shall not proceed to hear or dispose of the matter until the court is satisfied that the parent or other person having actual custody of the child, including, where applicable, any foster parent who immediately prior to the hearing has been caring for the child on behalf of a society for a continuous period of more than six months, has had reasonable notice of the hearing or that reasonable effort has been made in the opinion of the court to cause the parent or such other person to be notified. 1975, c. 1, s. 17 (3), *amended*.

(7) A foster parent who is given notice under subsection 6 is entitled to make representations to the court and to be represented by counsel at the hearing, but shall take no further part in the hearing without leave of the court. Foster parent at hearing

(8) The courts right to receive evidence in any hearing under this Part shall not be restricted by the content of any notice given or application made in writing with respect to the proceedings and the court may without requiring notice to be given, unless it considers further notice to be necessary in the circumstances, make an order at any stage in a proceedings amending such notice or application. *New.* Amendments

(9) Where, in the opinion of the court, prompt service of any notice required under subsection 6 of this section or subsection 6 of section 23 cannot be effected and any delay might endanger the health or safety of the child, the court may dispense with the requirements of those subsections. R.S.O. 1970, c. 64, s. 25 (7); 1975, c. 1, s. 17 (6), *amended.* Court may dispense with notice

(10) Where the requirements of subsection 6 have been dispensed with pursuant to subsection 9, the court shall not make an order committing the child as a ward of the Crown or make an order committing the child as a ward of a society for a period exceeding thirty days, except after holding a further hearing, and the requirements of subsection 6 apply to such further hearing. R.S.O. 1970, c. 64, s. 25 (8); 1975, c. 1, s. 17 (7), *amended.* Limitation where notice dispensed with

(11) A court may from time to time adjourn a hearing but no such adjournment shall, subject to subsection 12 and subsection 1 of section 28, be for more than thirty clear days, and pending final disposition of the hearing, Custody during adjournment

(a) where a society shows cause why the child should remain or should be placed, as the case may be, in the temporary care and custody of the society, the court shall order that the child remain or be placed in the temporary care and custody of the society; or

(b) where sufficient cause has not been shown why the child should remain or be placed, as the case may be, in the temporary care and custody of a society, the court shall order that the child be returned to or remain in the care and custody of the parent or other person in whose charge the child was immediately prior to,

(i) the child's detention, or

- (ii) the production of the child before the court by the parent or other person,

unless the court is satisfied that some other order for care and custody of the child is in the best interests of the child, in which case, the court may make such other order for the temporary care and custody of the child as the court considers advisable pending final disposition of the hearing, except an order placing the child in a training school established under *The Training Schools Act*, or placing the child in an observation and detention home established or designated under *The Provincial Courts Act* that has not been designated under this Act as a place of safety. R.S.O. 1970, c. 64, s. 25 (10); 1973, c. 75, s. 1, *amended*.

R.S.O. 1970,
cc. 467, 369

Longer period
of adjourn-
ment

(12) The court having regard to all the circumstances of the case and with the consent of the parties may adjourn a hearing under subsection 11 for a period longer than thirty days, and, where the court grants such longer period of adjournment, the order for adjournment shall contain the court's reasons for granting such longer period.

Variation or
termination
of order

(13) Where the court is satisfied that it is in the best interest of the child, the court may vary or terminate any order for care and custody made under subsection 11. *New*.

Application

(14) The provisions of this section apply with necessary modifications to proceedings under subsections 6 and 9 of section 30, section 33, section 35 and subsections 1 and 2 of section 36. 1972, c. 109, s. 4 (2), *amended*.

Order for
assessment

28.—(1) Where a child has been found to be a child in need of protection pursuant to section 27, a court may order the child and any parent of the child or other person, except a foster parent caring for the child on behalf of a society, in whose charge the child has been or may be, to attend for an assessment before a person or persons specified in the order and who in the opinion of the court are qualified to perform medical, emotional, developmental or social assessments and who have consented to perform the assessments and within a time specified therein, and the person or persons making the assessments shall report the results thereof in writing to the court within thirty days of the order or within such longer period of time as the court may direct.

Report

(2) The report of the assessment shall form part of the court record in the case and the court shall provide a copy of the report to,

- (a) subject to subsection 3, any person who is the subject of the assessment;

- (b) counsel or the agent on the record for the child;
- (c) a parent appearing at the hearing or the parent's counsel or agent on the record; and
- (d) the society that is a party to the proceedings,

and the court shall at any time upon request order a copy of the report to be provided to,

- (e) the Attorney General or the Attorney General's agent;
- (f) a Director; and
- (g) any other person for the purpose of the case as directed by the court.

(3) A child who is the subject of the assessment and ^{Idem} who is,

- (a) ten or more years of age shall be provided with a copy of the report unless the court is satisfied that the effect of the contents of all or any part of the report would be injurious to the emotional health of the child, in which case the court may withhold all or any part of the report from the child; or
- (b) under ten years of age shall not be provided with a copy of the report pursuant to subsection 2, unless the court considers it reasonable in the circumstances that the child receive the report or any part thereof.

(4) Where a person who has been ordered under subsection 1 to attend for an assessment refuses to attend or ^{Inference from refusal} to undergo the assessment, the court may draw such inferences relating to the placement of the child as it thinks appropriate. *New.*

29.—(1) Where a court finds a child to be a child in ^{Order where child in need of protection} need of protection pursuant to section 27, the court shall make the one of the following orders that the court considers to be in the best interests of the child, namely:

1. That the child be placed with or returned to the child's parent or other person, subject to supervision by the society having jurisdiction in the area where the judge hearing the case presides at the time of

the hearing, for a period of not less than six months and not more than twelve months as in the circumstances of the case the court considers advisable.

2. That the child be made a ward of and committed to the care and custody of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing, for such period, not exceeding twelve months, as in the circumstances of the case the court considers advisable.
3. That the child be made a ward of the Crown until the wardship is terminated under section 36 or expires under section 39 and that the child be committed to the care of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing. R.S.O. 1970, c. 64, s. 26; 1973, c. 75, s. 2, *amended*.

Period of
committal

R.S.C. 1970,
c. J-3

(2) Where a provincial judge has committed a child to the charge of a society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada), the child shall be deemed to be committed to the society under paragraph 2 of subsection 1,

- (a) where the order is for a fixed period that does not exceed twelve months, for the period specified in the order; or
- (b) where the order is for an indefinite period or exceeds twelve months, for twelve months.

Notice

(3) A provincial judge shall give reasonable notice to a society before committing a child to the charge of the society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada). 1975, c. 1, s. 18, *amended*.

Terms and
conditions

(4) In making an order under paragraph 1 of subsection 1, the court may impose reasonable terms and conditions, relating to the method of supervision of the child,

- (a) upon the person with whom the child has been placed or returned, as the case may be;
- (b) upon the supervising society; and
- (c) upon the child.

Determina-
tion of
order

(5) In determining which order to make under subsection 1, the court shall inquire of the parties whether any

efforts have been made by a society or any other agency or person to assist the child while the child was in the care of his or her parent or other person and before the child came into the care of the society. *New.*

30.—(1) Subject to subsection 2, where a child is found to be a child in need of protection and, Payment by parent

(a) is committed to the care of a society; or

(b) is placed with a person other than the child's parent subject to supervision by a society,

the court may order the parent or parents or the estate of the parent or parents to pay the society such an amount and at such intervals as the court considers proper for each day the child is in the care or under the supervision, as the case may be, of the society.

(2) An order made under subsection 1 shall not extend beyond the date when the child attains the age of eighteen years. Idem

(3) A court may vary or rescind the order under subsection 1 where the circumstances of the child or either parent have changed. 1975, c. 1, s. 19 (1), *amended*. Varying payments by parent

(4) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality on behalf of the society of the payments of the amounts required to be paid by parents under subsection 1. R.S.O. 1970, c. 64, s. 27 (3). Agreement to collect payments

(5) An order made against a parent under subsection 1 may be enforced in the same manner as an order made under Part II of *The Family Law Reform Act, 1978*. R.S.O. 1970, c. 64, s. 27 (4), *amended*. Enforcement of order 1978, c. 2

(6) Subject to subsections 10 and 11, where a child has been placed under the supervision of a society pursuant to an order made under paragraph 1 of subsection 1 of section 29, the society may at any time and shall, before the expiration of the period of supervision and upon giving notice to the child, the parent or any person having actual custody of the child, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify the variation or termination of any term or condition of the order relating to the method of supervision of the child or a further order under Further order

subsection 1 of section 29 and may, having regard to the best interests of the child, vary or terminate any term or condition in the order relating to the method of supervision of the child, terminate the order or make a further order under this Part.

s. 26 (1)
to apply

(7) The provisions of subsection 1 of section 26 apply to a child removed by a society from the parent or person with whom the child has been placed pursuant to an order under paragraph 1 of subsection 1 of section 29 for the purpose of applying to a court for a review of the child's status under subsection 6.

Jurisdiction
of court

(8) Notwithstanding subsection 2 of section 19, an application under subsection 6 or 9 may be heard by the court in the county or district in which the parent or other person with whom the child was placed pursuant to the order made under paragraph 1 of subsection 1 of section 29 resides at the time of the application.

Idem

(9) Where a child has been placed under the supervision of a society, pursuant to an order made under paragraph 1 of subsection 1 of section 29, a parent of the child or the child where the child is twelve or more years of age may, after the expiration of six months from the making of the order or from the disposition of any previous application under this section for a review of the child's status, whichever is later, and upon giving notice to the society, apply to a court for a review of the child's status and,

(a) where the court is satisfied that the termination of the order or the variation or termination of any term or condition of the order relating to the method of supervision of the child is in the best interests of the child, the court may terminate the order or vary or terminate such term or condition of the order; or

(b) the court may make such further order under this Part as the court considers is in the best interests of the child.

Jurisdiction
of society

(10) Notwithstanding paragraph 1 of subsection 1 of section 29, an application under subsection 6 may be made by the society having jurisdiction in the area where the parent or other person with whom the child was placed resided immediately prior to the application being made and, where the court makes an order, that society shall be given supervision or committal of the child, as the case may be. 1975, c. 1, s. 19 (2), *amended*.

(11) A child who is,

Notice to
child

- (a) ten or more years of age is entitled to notice under subsection 6 unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 6 unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 31. *New.*

31. The court shall, in every proceeding under this Part, make an order directing whether any child who is the subject of the proceedings shall be excluded from or be present at the hearing or any part thereof and in making an order under this section there shall be a presumption that,

Presence
of child
at
hearing

- (a) a child ten or more years of age is entitled to be present at any hearing that is part of the proceedings unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child; or
- (b) a child under ten years of age shall not be present at any hearing that is part of the proceedings unless the court considers it reasonable in the circumstances to order that the child be present at the hearing or any part thereof. *New.*

32. Notwithstanding section 129 of *The Judicature Act* and with the leave of the court hearing an application under this Part, any step may be taken in the application, the hearing may be held and the order may be made and performed at any time of any day, including a holiday.

Proceedings
at any time
or on a
holiday
R.S.O. 1970,
c. 228

R.S.O. 1970, c. 64, s. 28.

33.—(1) Subject to subsections 2, 3, 5 and 6,Access to
child

- (a) a parent of a child with whom a child is placed or to whom a child is returned subject to supervision by a society, upon giving notice to the society, and to the child;
- (b) a person other than a parent to whom a child is returned subject to supervision by a society, upon giving notice to the society, the parent and to the child;

- (c) a parent of a child in the care and custody of a society, upon giving notice to the society;
- (d) a child twelve or more years of age and who is in the care and custody or under the supervision of a society, upon giving notice to the society, to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to any parent of the child or to any other person with whom the child is placed or to whom the child is returned subject to supervision by a society, as the case may be;
- (e) a society having care and custody or supervision of a child upon giving notice to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to any parent of the child, to any person with whom the child is placed or to whom the child is returned subject to supervision of a society, as the case may be, and to the child,

may, at any time after the commencement of proceedings under this Part respecting the child and whether before or after the making of an order under this Part, apply to a court for an order regarding the right of access to the child.

Idem

(2) No order regarding the right of access to a person over the age of sixteen years shall be made under subsection 1.

Idem

(3) No application under subsection 1 shall be made by a person referred to in clause *a*, *b*, *c* or *d* of that subsection before the expiration of six months from the date of any previous application under that subsection by such person.
New.

Idem

(4) Upon an application therefor in accordance with subsection 1, or at the time of making any other order under this Part, a court, having regard to the best interests of the child shall consider whether or not an order regarding the right of access to the child shall be made, altered, varied or discharged and may make such order as the court considers proper regarding the right of access to the child by any person or may alter, vary or discharge, any order so made. R.S.O. 1970, c. 64, s. 29, *amended*.

Notice
may be
dispensed
with

(5) A child who is,

- (a) ten or more years of age is entitled to notice under subsection 1 unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1 unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 31.

(6) Where a notice is given to the society under clause *c* of subsection 1, the society shall forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months and to the child. *New.* Notice to foster parent

34. The reasons for any decision made by a court under this Part may be oral or written and shall include, Contents of decision

- (a) a statement of the evidence upon which the decision of the court is based;
- (b) in the case of a decision granting or renewing an order under paragraph 1 of subsection 1 of section 29 or varying any term or condition of the order, a statement of any terms and conditions imposed by the court;
- (c) in the case of a decision granting or refusing,
 - (i) an order under paragraph 1, 2 or 3 of subsection 1 of section 29,
 - (ii) an order for the renewal or termination of any existing order under paragraph 1 or 2 of subsection 1 of section 29 or for the termination of any existing order under paragraph 3 of subsection 1 of section 29, or
 - (iii) an order varying any term or condition of any existing order under paragraph 1 of subsection 1 of section 29,

a statement of the plan proposed by a society or of a plan, if any, proposed by a parent of the child to meet the best interests of the child, but nothing in this section shall require the court to identify in

the statement any person caring for the child during the period of any proposed placement or identify any place where the care is to be provided; and

- (d) a statement of the reasons for the decision, and, in the case of an order authorizing the removal of a child from or refusing to return the child to the parent or person in whose charge the child was immediately prior to the child's apprehension by a society, the statement shall include reasons why the child cannot be adequately protected without such removal or without the refusal of such return, as the case may be. R.S.O. 1970, c. 64, s. 30, *amended*.

Further
order

35.—(1) Subject to subsection 4, where a child has been committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 29, the society may at any time and shall, before the expiration of the period of wardship, other than under section 39, and upon giving notice to the child, the parent of the child and any foster parent who immediately prior to the application has been caring for the child on behalf of the society for a continuous period of more than six months, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify a further order under subsection 1 of section 29 and may, having regard to the best interests of the child, terminate the order or make a further order under this Part but in no case shall an order be made that results in the child being in the care and custody of a society,

- (a) as a ward of the society;
- (b) pursuant to an agreement under section 25; or
- (c) pursuant to an order for adjournment made under subsection 11 of section 27 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c*, for a continuous period of more than twenty-four months. R.S.O. 1970, c. 64, s. 31; 1973, c. 75, s. 4, *amended*.

Idem

(2) Subject to subsections 4 and 5, where a child has been committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 29,

- (a) a parent of the child after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, the society having the care of the child and any parent of the child,

may apply to a court for a review of the child's status and,

- (c) where the court is satisfied that the termination is in the best interests of the child, the court may terminate the order; or
- (d) the court may make such further order under this Part as the court considers necessary in the best interests of the child, but in no case shall an order be made that results in the child being in the care and custody of a society,
 - (i) as a ward of the society,
 - (ii) pursuant to an agreement under section 25, or
 - (iii) pursuant to an order for adjournment made under subsection 11 of section 27 or any extension thereof,

or as a result of any combination of circumstances referred to in subclauses i, ii and iii, for a continuous period of more than twenty-four months. 1975, c. 1, s. 20, *amended*.

(3) Notwithstanding subsections 1 and 2, where, on an application under subsection 1 or 2 for a review of the child's status, the hearing is adjourned to a date beyond the twenty-four month period prescribed in those subsections, the order to be reviewed shall not expire at the end of such period but shall be extended until an order pursuant to subsection 1 or 2 has been made. *New.*

Extension
of limitation
period

Notice may
be
dispensed
with

(4) A child who is,

- (a) ten or more years of age is entitled to notice under subsection 1 unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1 unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 31. *New.*

Notice to
foster
parent

(5) Where a notice is given to the society under clause *a* of subsection 2, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months and to the child. *New.*

Application
to review
Crown
wardship

36.—(1) Subject to subsections 4, 5, 6 and 7, where a child has been committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 29,

- (a) a parent of the child after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to a Director, the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to a Director, any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, the society having the care of the child and any parent of the child,

may apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 8, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 29, that the

court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 33. *New.*

(2) Subject to subsections 4, 5 and 6, where a child has been committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 29, the society having the care of the child upon giving notice to a Director, any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, any parent of the child and the child, may, at any time during the period of the Crown wardship, apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 8, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 29, that the court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 33. *Idem*

(3) A Director or any person authorized by the Director shall, during each calendar year beginning in the year 1979, review the status of each child who during that calendar year and, in the absence of any further order by the court, has been or will continue to be, a Crown ward for a continuous period of twenty-four months from the date of the order of Crown wardship or from the last review under this subsection, whichever is later, and the Director may after any such review direct the society having care of the child to make an application pursuant to subsection 2 to a court for a review of the child's status. *Review by Director*
New.

(4) A notice is not required to be given under subsections 1 and 2 to a parent of the child where the child has attained the age of sixteen years. 1975, c. 1, s. 21, *amended*. *Notice not required*

(5) A child who is,

Notice may be dispensed with

- (a) ten or more years of age is entitled to notice under subsections 1 and 2 unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

- (b) under ten years of age is not entitled to notice under subsections 1 and 2 unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 31. *New.*

Termination
of access

(6) Before making an order under subsection 1 or 2 terminating an order for access to the child made pursuant to section 33, the court shall consider whether the benefit to the child of any plan proposed for the child, including plans for seeking an adoption placement for the child, outweighs the benefit to the child of maintaining the access rights.

Notice to
foster
parent

(7) Where a notice is given to the society under clause *a* of subsection 1, the society shall, forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months and to the child. *New.*

Crown
wardship to
remain in
effect

(8) Where a child has been committed as a ward of the Crown, the order made under paragraph 3 of subsection 1 of section 29 shall, subject to subsection 3 and section 39, remain in effect and the Crown wardship shall, subject to an adoption order being made with respect to the child under Part III, not be terminated where the child has been placed for the purpose of adoption in the home of a person who has been approved by a society or by the Director as a suitable person to adopt the child and while the child is residing in that person's home.

When
placement
for adoption
may be
made

(9) The placement for the purpose of adoption of the child referred to in subsection 8 shall not be made until any appeal under section 40, from,

(a) the decision granting an order of Crown wardship;
or

(b) any decision granting or refusing an order under subsection 1 or 2,

has finally been disposed of, or until,

(c) the period of time for commencing an appeal under section 40 from a decision referred to under clause *a* or *b* has expired; or

(d) any outstanding order of access to the child under this Act has been terminated,

whichever is the later. R.S.O. 1970, c. 64, s. 32 (2, 3), *amended.*

Duties re
Crown wards

37. The Crown has and shall assume all the rights and responsibilities of a legal guardian of each child who is made

a ward of the Crown for the purpose of the child's care, custody and control, and the powers, duties and obligations of the Crown in respect of the child other than the powers, duties and obligations assigned to a Director by this Act shall be exercised and discharged by the society having the care of the child. R.S.O. 1970, c. 64, s. 33, *amended*.

38. Each society has and shall assume all the rights and responsibilities of a legal guardian of every child who is committed as a ward of the society for the purpose of their care, custody and control. R.S.O. 1970, c. 64, s. 34, *amended*. Society to be legal guardian

39. Every order under this Part shall be deemed to expire with the marriage of the child who is the subject of the order or when the child attains the age of eighteen years, but where a wardship expires as a result of a Crown ward attaining the age of eighteen years, a society may, with the approval of a Director, continue to provide care and maintenance for the former Crown ward if the former Crown ward, Expiration of wardship

(a) is enrolled as a full-time student at an educational institution; or

(b) is mentally or physically incapacitated,

for any period of time after the expiration of the wardship that does not extend beyond the date when the former Crown ward attains the age of twenty-one years. 1972, c. 109, s. 5 (1), *amended*.

40.—(1) A decision granting or refusing an order of a court under this Part except a decision made under section 20 or subsection 1 of section 28 in respect of a child may be appealed to the county or district court of the county or district in which the decision was made. 1975, c. 1, s. 22, *amended*. Appeal to county court judge

(2) Execution of the decision being appealed shall be stayed for ten days next following the service of the notice of appeal upon the court that made the decision being appealed, and, where the child is in the custody of the society at the time the decision being appealed is made, the child shall remain in the care and custody of the society, Decision stayed

(a) during the ten days that execution of the decision is stayed; or

(b) until the county or district court of the county or district in which the decision was made makes an order for temporary care and custody of the child pursuant to subsection 3,

whichever is earlier.

Temporary
order of
court

(3) Where the county or district court of the county or district in which the decision being appealed was made is satisfied that an order for care and custody of the child is in the best interests of the child, the county or district court may make such order for the temporary care and custody of the child that the county or district court considers advisable pending final disposition of any appeal made under this section, except an order placing the child in a training school established under *The Training Schools Act* or placing the child in an observation and detention home established or designated under *The Provincial Courts Act* that has not been designated under this Act as a place of safety, and the county or district court may, upon application by any party before the final disposition of the appeal and where the county or district court is satisfied that it is in the best interests of the child, vary or terminate the order or make a further such order.

R.S.O. 1970,
cc. 467, 369

Period of
temporary
wardship

(4) Where, pursuant to the final disposition of the appeal, the child is committed as a ward of the society, any period of temporary care and custody ordered under subsection 3 shall be included in determining the twenty-four month period prescribed in subsection 1 or 2 of section 35.

Extension
of
limitation
period

(5) Notwithstanding subsection 4 and subsections 1 and 2 of section 35, where on an appeal under this section from a decision granting an order under paragraph 2 of subsection 1 of section 29 or an order for the renewal or termination of an order under that paragraph, the final disposition of the appeal extends beyond the twenty-four month period prescribed in subsection 1 or 2 of section 35, the order being appealed shall not expire at the end of such period but shall be extended until a final disposition is made of the appeal.

Extension of
time for
appeal

(6) No extension of the time for the commencement of the appeal shall be granted after the child has been placed for adoption. *New.*

New
evidence

(7) On the hearing of the appeal and with leave of the county or district court hearing the appeal, further evidence relating to matters both preceding and subsequent to the making of the decision being appealed, may be received either by affidavit, oral examination or as may be directed by the county or district court. 1975, c. 1, s. 22, *amended.*

Pre-
sumption
as to
religious
faith

41.—(1) Subject to subsection 2, for the purposes of this section, a child shall be deemed to have the same religious faith as the child's father unless it is shown that an agreement has been entered into in writing, signed by the child's parents, that the child be brought up in the same religious faith as the child's mother.

(2) For the purposes of this section, a child born outside marriage shall be deemed to have the religious faith of the child's mother. Child born outside marriage

(3) Where a child is being raised in a religious faith other than the child's religious faith as determined under subsection 1 or 2 or where the child's religious faith cannot be readily determined under subsection 1 or 2, the court may determine the child to have such religious faith, if any, for the purposes of this section, as the court considers proper in the circumstances. Where established faith not that of parent

(4) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of the child's own religious faith, if any. Religious faith of child

(5) Subsection 4 does not apply to the commitment of a child to the care of a society in a municipality in which there is only one society. Where only one society

(6) Where a society,

- (a) is unable to place a child in a suitable foster home within a reasonable time because of the operation of subsections 1 to 4; and
- (b) would be able to place the child in a suitable foster home but for the operation of subsections 1 to 4,

Application to waive subs. 4

the society or a Director may apply to a judge who may order that subsection 4 does not apply to the child in respect of the placement.

(7) Notwithstanding anything in this section, the court may have regard to the wishes of the child in determining what order ought to be made as to the child's religious faith. Child's wishes to be consulted
R.S.O. 1970, c. 64, s. 37, *amended*.

42.—(1) A child who is a ward of the Crown or of a society may be placed by the society for any period of time in a foster home or other suitable place according to the needs of the child and the society shall ensure that the child so placed receives an education in accordance with the laws of Ontario and in keeping with the child's intellectual capacity and that provision is made for the child's occupa- Society may place ward

tional training and total development such as a good parent would provide for his or her own child.

Removal
of ward
of society

(2) A child who is a ward of the Crown or of a society and who has been placed in a foster home or other suitable place may at any time be removed by the society when, in the opinion of a Director or the local director, the welfare of the child so requires.

Adoption
of ward

(3) Where a child who is a ward of the Crown is placed in a foster home and, in the opinion of the local director with the approval of a Director, it is in the best interests of the child to place the child for adoption, the foster parents shall not be denied the opportunity of making application to adopt the child if they so desire. R.S.O. 1970, c. 64, s. 38, *amended*.

Inter-
ference
with wards,
etc.

43. No person shall,

- (a) induce or attempt to induce a child to leave the care of a person or persons with whom the child is lawfully placed; or
- (b) detain or harbour a child who is lawfully in the care of a person or persons, after a demand is made by a person authorized to require the child to be delivered up; or
- (c) subject to section 33, visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or otherwise interfere with a child who is in the lawful care or custody of a society; or
- (d) subject to section 33, visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a foster parent of a child where the child is in the lawful care or custody of a society,

without the consent in writing of the society having the care, custody or supervision of the child. R.S.O. 1970, c. 64, s. 39, *amended*.

Interpre-
tation

44.—(1) For the purposes of this section and sections 45 and 46, “abuse” means a condition of physical harm or neglect or sexual molestation. *New*.

Desertion,
abuse, etc.,
of child

(2) No person having the care, custody, control or charge of a child shall abandon or desert the child or inflict abuse upon the child or permit the child to suffer abuse.

Leaving
child

(3) No person having the care, custody, control or charge of a child shall leave the child without making reasonable provision, in the circumstances, for the supervision, care or safety of the child.

(4) A court may in connection with any case arising under subsection 2 or 3 hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. R.S.O. 1970, c. 64, s. 40, *amended*. Further proceedings as to child

(5) Where a person is charged with contravening subsection 3, the onus of establishing that reasonable provision was made in the circumstances for the supervision, care or safety of the child where the child is under the age of ten years, rests with the person charged. *New*. Onus

45.—(1) Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society. R.S.O. 1970, c. 64, s. 41 (1), *amended*. Reporting abuse of child

(2) Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has or has had charge of the child shall forthwith report the suspected abuse to a society. *New*. Duty of professional to report

(3) This section applies notwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection 1 or 2 unless the giving of the information is done maliciously or without reasonable and probable cause. R.S.O. 1970, c. 64, s. 41 (2), *amended*. Privilege abolished

(4) Where the Official Guardian, and in the case of a child in the care of a society under paragraph 2 or 3 of subsection 1 of section 29, the society, or either of them, is of the opinion that a child has a cause of action against a person or persons or other right of recovery by reason of the infliction of abuse upon the child and that the institution of proceedings to recover damages or other compensation would be in the best interests of the child, the Official Guardian or the society, as the case may be, may institute and conduct such proceedings on behalf of the child in respect of the abuse suffered by the child. Action for recovery on behalf of child

46.—(1) In this section,

- (a) "Director" means the Director appointed under subsection 1 of section 2 for the region in Ontario that includes the head office of the ministry;

Interpretation

- (b) “registered person” means a person named in or otherwise identifiable from the register established under subsection 3, but does not include the person or persons making the report to a society pursuant to subsection 1 or 2 of section 45 who are not themselves the subject of the report.

Society
to report
information
concerning
abuse

(2) Every society that receives information under section 45 concerning the abuse of a child, including a child in the care of a society, shall forthwith, after the information is verified in the manner determined by the Director, report the information to the Director in the prescribed form.

Register

(3) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information received by societies under section 45 concerning the abuse of children, but the register shall not contain any information that has the effect of identifying the person or persons making the report to a society pursuant to subsection 1 or 2 of section 45 unless such person or persons are themselves the subject of the report.

Information
confidential

(4) Subject to subsections 5 to 10 and notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the register established under subsection 3.

Exceptions

1972, c. 98

(5) A coroner, a legally qualified medical practitioner or police officer authorized in writing and directed by a coroner for the purposes of an investigation or inquest under *The Coroners Act, 1972* and the Official Guardian or a person duly authorized as the agent of the Official Guardian may inspect or remove the information maintained in the register established under subsection 3 and may disclose or transmit that information only in accordance with the authority vested in the person and in the case of the Official Guardian or his duly authorized agent only for the purposes of subsection 4 of section 45.

Idem

(6) The Director and the following persons with the approval of the Director, and subject to such terms and conditions as the Director may impose, may inspect or remove or permit the inspection or removal of the information maintained in the register and may disclose or transmit or permit the disclosure or transmission of that information to any person referred to in subsection 5 or to any other person referred to in this subsection:

1. A person who is on the staff of,

- i. the Ministry,
- ii. a society, or
- iii. a child protection agency recognized by a jurisdiction outside Ontario.

2. A person who is or may be providing services or treatment to a registered person.

(7) A person who has the written approval of the Director ^{Idem} and who is engaged in *bona fide* research may inspect the information referred to in subsection 4 but shall not use or communicate the information for a purpose other than research, academic pursuits or the compilation of statistical data and shall not communicate any information that has the effect of identifying any person named in the register.

(8) A registered person or the registered person's agent ^{Idem} may inspect the information maintained in the register, but shall not inspect information that refers to persons other than the registered person.

(9) A legally qualified medical practitioner who is ap- ^{Idem} proved by the Director may inspect information referred to in subsection 4 that is approved by the Director.

(10) The Director or a person approved by the Director ^{Idem} who is on the staff of the Ministry may expunge a name from the register or otherwise amend the register pursuant to a decision of the Director or as prescribed by the regulations.

(11) The register established under subsection 3 is in- ^{Information in register inadmissible} admissible in evidence for any purpose in any proceedings, except,

- (a) to prove compliance or non-compliance with any of the provisions of this section;
- (b) in an appeal made under subsection 19;
- (c) in proceedings under *The Coroners Act, 1972*; or ^{1972, c. 98}
- (d) in proceedings referred to in subsection 4 of section 45.

(12) Where an entry is made in the register, the Director ^{Notice} shall forthwith cause notice to be given in writing to each registered person included in the entry who is alleged or suspected to have inflicted abuse upon a child,

- (a) that the person's name has been recorded in the register or that the person is otherwise identifiable from the register;

- (b) that the person or the person's agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) that the person is entitled to request the Director to expunge the person's name from the register or to have the register otherwise amended.

Request
for a
hearing

(13) A person to whom a notice is given under subsection 12 may request the Director to expunge from the register the registered person's name referred to in the notice or to otherwise amend the register.

Hearing

1971, c. 47

(14) Where the Director receives a request under subsection 13, the Director shall hold a hearing before deciding to refuse the request to expunge the registered person's name from the register or to refuse the request to otherwise amend the register, and the provisions of *The Statutory Powers Procedure Act, 1971* apply, with necessary modifications, to the hearing.

Parties

(15) A registered person to whom notice is given under subsection 12, the society that received the information concerning the registered person under subsection 1 or 2 of section 45 and such other persons as the Director may specify are parties to the hearing.

Notice

(16) The Director shall cause notice of the hearing to be given to the parties to the hearing at least ten days before the hearing is held.

Decision
of
Director

(17) Where the Director, after holding a hearing, is satisfied that there are reasonable grounds to believe that the information in the register with respect to a registered person should not be in the register or that the information is in error, the Director shall, subject to subsections 19 and 20, cause the registered person's name to be expunged from the register or otherwise cause the register to be amended, as the case may be, and the Director may order that a society's records be amended to reflect the Director's decision.

Delegation of
authority
to hold a
hearing

(18) The Director may authorize any other person to hold a hearing required under subsection 14 and where such person is authorized by the Director to hold the hearing, the person shall exercise the powers and duties of the Director under subsections 14 to 17.

Appeal

(19) Any person who is a party to the hearing may appeal the decision made pursuant to subsection 17 to the Divisional Court.

(20) The Divisional Court may affirm the decision appealed from or may rescind the decision and refer the matter back to the Director or the person authorized by the Director under subsection 18, as the case may be, to be disposed of in accordance with such directions as the Divisional Court considers proper under this section, and the Director or the person authorized by the Director shall give effect to any direction given by the Divisional Court under this subsection.

Decision of
Divisional
Court

(21) The record of proceedings in any hearing held under subsection 14 or in any appeal under subsections 19 and 20 is inadmissible in evidence in any other proceeding for any purpose except to prove compliance or non-compliance with any of the provisions of this section. *New.*

Record of
proceedings
at hearing
inadmissible

47.—(1) No person shall,

Causing
child
to beg,
perform,
etc.

- (a) cause or procure a child to be in any place to which the public has access for the purpose of begging or receiving charity or of inducing the giving of charity whether under the pretence of singing, playing, performing, offering anything for sale or otherwise; or
- (b) subject to subsection 2, cause or procure a child to be in any place to which the public has access for the purpose of singing, playing or performing for profit or offering anything for sale between 9 o'clock in the afternoon of any day and 6 o'clock in the morning of the following day; or
- (c) subject to subsection 2, cause or procure a child to be at any time for the purpose of singing, playing or performing for profit or offering anything for sale in any circus, theatre or other place of public entertainment to which the public is admitted by payment.

(2) In the case of an entertainment or series of entertainments to take place in premises used for public entertainment or in a circus, theatre or other place of public amusement, where it is shown that provision has been made to ensure the health and proper treatment of a child proposed to be employed thereat, the head of the council of the municipality where the entertainment is to take place may, with the approval of a society having jurisdiction where the entertainment is to take place, grant a licence for such time and during such hours of the day and subject to such restrictions and conditions as the head of the council thinks fit for any child who in the opinion of the head of the council is a fit and proper person to take part in such entertainment or series of entertainments, and the licence may at any time

Licence for
child to
perform in
public

be varied, added to or revoked by the head of the council with the approval of the society.

Officer to
supervise
licence

(3) The head of the council may assign to the chief of police of the municipality or to some other person the duty of ensuring that the restrictions and conditions of any licence granted under subsection 2 are duly complied with, and the chief of police or such person, as the case may be, may enter, inspect and examine any place at which the employment of a child is for the time being licensed. R.S.O. 1970, c. 64, s. 42, *amended*.

Person under
sixteen in
public place

48.—(1) Subject to subsection 2 of section 47, no person under sixteen years of age shall engage in any trade or occupation in a place to which the public has access between the hours of 9 o'clock in the afternoon and 6 o'clock in the morning of the following day.

Person
under
sixteen
loitering
in public
place
at night

(2) No person under sixteen years of age shall loiter in any place to which the public has access between the hours of 10 o'clock in the afternoon and 6 o'clock in the morning of the following day or be in any place of public resort or entertainment during such hours unless accompanied by the person's parent or an adult appointed by the parent to accompany that person.

Warning

(3) A person found contravening any provision of this section may be warned by a police officer, and, if the warning is not regarded or if, after the warning, the person is again found contravening any provision of this section, the person may be taken by the police officer to the person's home or to a place of safety and where the person is taken to a place of safety, the person shall be brought before a court as if the person had been apprehended pursuant to section 21 or 22. R.S.O. 1970, c. 64, s. 43 (2-5), *amended*.

Presumption
as to
age of
child

49. Where a person is charged with an offence under this Part in respect of a child who is alleged to be under a specified age and the child appears to the court to be under that age, the child shall for the purposes of this Part be deemed to be under that age unless the contrary is proved. R.S.O. 1970, c. 64, s. 44.

Separate
place of
detention

50.—(1) A child who is charged with an offence or brought before a court under this Part shall not, before the child's trial or hearing, be confined in a place used for persons charged with crime. R.S.O. 1970, c. 64, s. 45 (1), *amended*.

Idem

(2) Provision shall be made for the separate detention of every such child prior to the child's trial or hearing by arrangement with a person or society willing to undertake

the responsibility of such detention on such terms as are agreed upon, or by providing suitable premises entirely distinct and separated from the ordinary lock-up or correctional institution. R.S.O. 1970, c. 64, s. 45 (2); 1975, c. 1, s. 24, *amended*.

(3) A child lawfully in custody shall not be placed or ^{Idem} allowed to remain in the company of adult prisoners. R.S.O. 1970, c. 64, s. 4 (3).

51.—(1) Where a hearing is held under this Part, except ^{Place of hearing} a hearing under section 46, whether upon an application or by way of trial or appeal, the hearing shall be held in premises maintained specifically for the purpose or in the private office of the judicial officer holding the hearing or in other suitable premises, but the hearing shall not be held in premises ordinarily used for hearings in criminal proceedings.

(2) Where a hearing is held under this Part, whether ^{Exclusion of persons from hearing} upon an application or by way of trial or appeal, all persons shall be excluded from the hearing unless otherwise directed by the judicial officer holding the hearing.

(3) Notwithstanding subsection 2, ^{Idem}

(a) a person acting as prosecutor in the proceedings and an agent of the Attorney General and of a Director; and

(b) subject to section 31, a child who is a party to the proceedings, the child's parents, a representative of a society, a person acting on behalf of the child, a person acting on behalf of the society, a person acting on behalf of the child's parents and any other person entitled to notice of the hearing,

may be present at a hearing held under this Part.

(4) Notwithstanding subsection 2 and subject to subsection 5, representatives of the press, radio and television media not exceeding two in number as agreed upon by all such representatives who present themselves, may be present at a hearing under this Part, except a hearing under section 46, but the judicial officer holding the hearing may exclude any or all such representatives from all or any part of the hearing or may prohibit the reporting of all or any part of the case by such representatives who are present at the hearing where the judicial officer is of the opinion that the presence of the representative or representatives, as the case may be, at the hearing or the reporting would be injurious to the emotional health of any child before the court and the judicial officer shall give reasons for the exclusion.

Idem (5) Where the representatives referred to in subsection 4 who are entitled to be present at the hearing are unable to agree as to who shall be present at the hearing, the judicial officer holding the hearing may designate those representatives who are entitled to be present.

Idem (6) The presence at the hearing of more than two representatives of the press, radio or television media may be allowed by the judicial officer holding the hearing.

Publication (7) Where a hearing is held under this Part, whether upon an application or by way of a trial or appeal, no person shall publish or make public in respect of the proceedings any information that has the effect of identifying,

(a) any child or a parent or foster parent of the child or a member of the child's family present at the proceedings whether as a party, witness or otherwise; and

(b) any person charged with an offence in the proceedings. R.S.O. 1970, c. 64, s. 46, *amended*.

Effect of
order of
court in
other
jurisdiction

52. Where, an order or orders made by a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof that is prescribed in the regulations and such order or orders do not effect an adoption of the child according to the law of the jurisdiction where the order or orders were made, but the rights and responsibilities of guardianship in respect of a child have been legally vested by such order or orders in any person, organization, province, state, country or legal representative of any of them, the order or orders so made shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

PART III

ADOPTION

Interpre-
tation

53.—(1) In this Part and Part IV,

(a) "adoption agency" means a corporation without share capital having objects of a charitable nature,

R.S.O. 1970,
c. 89

(i) to which Part III of *The Corporations Act* applies, or

(ii) that is incorporated under a general or special Act of the Parliament of Canada,

and that places children under eighteen years of age for adoption and includes a society;

- (b) "licence" means a licence issued under this Act;
- (c) "relative of the child" means a grandparent, uncle or aunt of the child, whether the relationship is of whole blood, half blood or by marriage, and notwithstanding that the relationship is traced through or to a person born outside marriage or that the relationship depends on the adoption of any person. R.S.O. 1970, c. 64, s. 69, *amended*.

(2) In this Part, "child" means a person whether under Idem
eighteen years of age or eighteen or more years of age.

54.—(1) No person other than a society shall establish, Licence
required
operate or maintain an adoption agency except under the authority of a licence issued by a Director under this Act.

(2) Subject to section 55, any person who is a corporation Issuance
of
licence
without share capital having objects of a charitable nature,

- (a) to which Part III of *The Corporations Act* applies; R.S.O. 1970,
c. 89
or
- (b) that is incorporated under a general or special Act of the Parliament of Canada,

and who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain an adoption agency and pays the prescribed fee is entitled to be issued a licence by a Director subject to such terms and conditions as the Director may prescribe.

(3) Subject to section 55, a Director shall renew a licence Renewal
of
licence
of an adoption agency on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee, and the renewal shall be subject to such terms and conditions as the Director may prescribe.

(4) Where an applicant for a licence or a renewal of a Provisional
licence
licence does not meet all the requirements for the issuance of a licence or renewal thereof and requires time to meet such requirements, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for such period or periods as the Director considers necessary to afford the applicant an opportunity to meet the requirements.

- (5) A licence is not transferable.

Not
transferable

Notice of
change

(6) The licensee shall notify a Director in writing within fifteen days of any change in the officers or directors of the corporation. *New.*

Grounds
for
refusal

55.—(1) Subject to section 56, a Director may refuse to issue a licence where in the Director's opinion,

- (a) any of the officers, directors or employees of the applicant are not competent to place children under eighteen years of age for adoption in a responsible manner in accordance with this Act and the regulations; or
- (b) the past conduct of any of the officers, directors or employees of the applicant affords reasonable grounds for belief that any of them will not operate an adoption agency in accordance with this Act and the regulations.

Revocation
or refusal
to renew

(2) Subject to section 56, a Director may refuse to renew or may revoke a licence issued to an adoption agency where in the Director's opinion,

- (a) any officer, director or employee of the licensee has contravened or has knowingly permitted any person under the control or direction of or associated with the officer, director or employee, as the case may be, to contravene,
 - (i) any provision of this Act or the regulations, or
 - (ii) any term or condition of the licence;
- (b) any person has made a false statement in the application for the licence or renewal thereof, or in any report, document or other information required to be furnished by this Act or the regulations or by any other Act or regulation that applies to the adoption agency;
- (c) a change in the officers or directors of the applicant would, if the applicant were applying for the licence in the first instance, afford grounds for refusing to issue a licence under clause *b* of subsection 1; or
- (d) the adoption agency is operated in a manner that is prejudicial to the health, safety or welfare of the children being placed by the adoption agency for adoption. *New.*

56.—(1) In this section and in section 57, “Board” means the Children’s Services Review Board established under *The Children’s Residential Services Act, 1978*. Interpretation
1978, c. . . .

(2) Where the licensee is dissatisfied with the terms and conditions prescribed by the Director under subsection 2, 3 or 4 of section 54, the licensee may, within fifteen days after the licence is received by the licensee by written notice given to the Director and to the Board, require a hearing by the Board and the Board shall appoint a time for and shall hold a hearing. Hearing

(3) The Board, pursuant to a hearing under subsection 2, may affirm the terms and conditions prescribed by the Director under subsection 2, 3 or 4 of section 54 or may cancel such terms and conditions or may prescribe such other terms and conditions in lieu of those prescribed by the Director as it considers proper. Board may impose terms and conditions

(4) For the purposes of subsection 2, a licence shall be deemed to be received by a licensee on the tenth day after the day of mailing of the licence unless the person to whom the licence is issued establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person’s control, receive the licence until a later date. Receipt of licence

(5) Where a Director proposes to refuse to issue a licence under section 55 or to refuse to renew or revoke a licence issued under that section, the Director shall cause notice to be served of the Director’s proposal, together with written reasons therefor, on the applicant or the licensee, as the case may be. Notice of proposal to refuse to issue or to revoke

(6) A notice under subsection 5 shall inform the applicant or licensee, as the case may be, that the applicant or licensee is entitled to a hearing by the Board if the applicant or licensee mails or delivers, within fifteen days after the notice is served on the applicant or licensee, notice in writing to the Director and to the Board requiring a hearing, and the applicant or licensee, as the case may be, may so require such a hearing. *New.* Notice requiring hearing

57. Sections 6, 8, 10 and 11 of *The Children’s Residential Services Act, 1978* apply with necessary modifications to a notice under subsection 2 or 5 of section 56, to proceedings before the Board, to the powers of the Board under this Act and to appeals therefrom. *New.* Application

58. Notwithstanding section 56, a Director may, by causing notice to be served on an adoption agency and Suspension of licence

without a hearing, provisionally suspend the licence of the agency where, in the opinion of the Director, the operation of the agency is an immediate threat to the health, safety or welfare of children placed or to be placed by the adoption agency for adoption and the Director so states in such notice giving reasons therefor, and, upon suspension, the provisions of sections 56 and 57 apply as if the notice given under this section were a notice of a proposal under subsection 2 of section 56 to revoke the licence. *New.*

Child to be
placed by
licensed
adoption
agency

59.—(1) No person other than an adoption agency shall,

- (a) place or cause to be placed a child under eighteen years of age with another person; or
- (b) take or send or attempt to take or send any child under eighteen years of age who is a resident of or who was born in Ontario, out of Ontario,

for the purpose of adoption.

Approval of
Director
required

(2) No person shall receive a child under eighteen years of age for the purpose of adoption without the prior approval of a Director under subsection 6.

Notice to
Director

(3) Every adoption agency that proposes,

- (a) to place a child under eighteen years of age; or
- (b) to take or send a child under eighteen years of age who is a resident of or was born in Ontario, out of Ontario to be placed,

for the purpose of adoption, shall in advance of the placement notify a Director of the proposed placement.

Application

(4) Subsections 1, 2 and 3 do not apply to,

- (a) the placement of a child with a relative of the child or with the spouse of a parent of the child; or
- (b) the taking or sending of a child out of Ontario,
 - (i) by a parent of the child for adoption by the spouse of the parent of the child, or
 - (ii) for placement of the child with a relative of the child for the purpose of adoption.

Idem

(5) Subsections 2 and 3 do not apply to the placement of a child by a society.

Homestudy

(6) The Director shall forthwith after receiving a notice under subsection 3 obtain a report of a homestudy made

by a person who, in the opinion of the Director or local director of a society, is qualified to make the homestudy of the person proposing to adopt the child.

(7) The Director shall forthwith, after receiving the report of the results of the homestudy, approve the proposed placement for adoption or notify the adoption agency and the person proposing to adopt the child of the Director's intention to refuse approval of the placement and that the adoption agency and the person proposing to adopt the child are entitled to a hearing before the Children's Services Review Board under *The Children's Residential Services Act, 1978* and thereafter the provisions of sections 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to such a hearing. ^{Decision of Director, etc.} ^{1978, c. . . .}

(8) Where the Director approves the proposed placement for adoption under subsection 7, the Director may direct a society, or in the case of a placement out of Ontario may arrange for a child protection agency recognized in the jurisdiction of the placement, to supervise the placement subject to such terms and conditions as the Director may prescribe. *New.* ^{Supervision of placement by society}

(9) Where the person proposing to adopt the child or the adoption agency is dissatisfied with the terms and conditions prescribed by a Director under subsection 8, the person or the adoption agency is entitled to a hearing before the Children's Services Review Board under *The Children's Residential Services Act, 1978* and thereafter the provisions of sections 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to such a hearing. ^{Hearing}

(10) The Children's Services Review Board, pursuant to a hearing under subsection 9, may affirm the terms and conditions prescribed by the Director under subsection 8 or may cancel such terms and conditions or may prescribe such other terms and conditions for the supervision of the placement in lieu of those prescribed by the Director as it considers proper. ^{Decision of Board}

60. Notwithstanding subsection 3 of section 63, a Director, with or without the request of any person, may review the decision of any adoption agency to refuse to place a child with a person for the purpose of adoption by that person or to remove the child who has been placed with a person for the purpose of adoption and the Director may confirm the decision of the adoption agency or rescind the decision and the Director may give such direction, make any ^{Review by Director}

further decision or take any further step that an adoption agency is authorized to make, give or take under this Act.
New.

Prohibition
against
payments
for
adoptions

61.—(1) Subject to subsection 2, no person, whether before or after the birth of a child, shall make, give or receive or agree to make, give or receive a payment or reward for or in consideration of or in relation to,

- (a) the adoption or proposed adoption of the child under this Part;
- (b) the giving of consent or the signing of an instrument of consent to the adoption of the child under this Part;
- (c) the transfer of the custody or control of the child with a view to the adoption of the child under this Part; or
- (d) the conduct of negotiations or the making of arrangements with a view to the adoption of the child under this Part.

Idem

(2) Subsection 1 does not apply to or in relation to any of the following payments in connection with an adoption or proposed adoption under this Part:

- 1. Payment of expenses of an adoption agency.
- 2. Payment of legal expenses.
- 3. Payment made by a proposed adoptive parent with the approval in writing of a Director or with the approval of the court in respect of hospital and medical expenses reasonably incurred in connection with the birth of a child or pre-natal or post-natal care and treatment of the natural mother of the child. R.S.O. 1970, c. 64, s. 88, *amended*.

Duty of
society
to secure
adoption

62. Every society shall endeavour to secure the adoption of Crown wards, having regard to the best interests of each Crown ward. R.S.O. 1970, c. 64, s. 86 (1).

Interpre-
tation

63.—(1) In this section, “parent” includes,

- (a) a guardian;
- (b) a person who has demonstrated a settled intention to treat a child as a child of the person’s family; and

(c) where a child is born outside marriage,

- (i) a person who having acknowledged a parental relationship to the child has voluntarily provided for the child's care and support,
- (ii) a person who pursuant to an order of a court of competent jurisdiction or a written agreement is under a legal duty to provide for the child or has been granted custody or access to the child,
- (iii) a person who has made a written acknowledgment of the fact of his or her parentage to the adoption agency placing the child for adoption,

but does not include the Crown or a society. *New.*

(2) An order for the adoption of a child under eighteen years of age and who has not been married shall be made only with the written consent, given after the child is seven days old, of every person who is a parent or who has lawful custody or control of the child, but any person who has given his or her consent may cancel it by a document in writing to that effect within twenty-one days after the consent is given. R.S.O. 1970, c. 64, s. 73 (1, 2); 1971, c. 98, s. 4, Sched., par. 6, *amended*. Consent

(3) Upon the giving of all the consents required under subsection 2, all the rights and responsibilities of a legal guardian of the child for the purpose of the child's care, custody and control belonging to the person or persons giving the consents shall, where the child is being placed for adoption by an adoption agency and, subject to subsection 11, transfer to, be vested in and be assumed by the adoption agency so long as the consents remain in force and until an adoption order is made. Rights and responsibilities

(4) Notwithstanding subsection 3, the rights and responsibilities of a legal guardian of the child shall not transfer to an adoption agency until the twenty-one day period for cancellation of the consent given under subsection 2 has expired. Idem

(5) An order for the adoption of a child who is a Crown ward shall be made only with the written consent of a Director, in which case no other consent, except a consent required under subsection 6, is required. R.S.O. 1970, c. 64, s. 73 (3), *amended*. Idem, Crown ward

(6) An order for the adoption of a child who is seven or more years of age shall be made only with the written consent of the child, and, where the child is married, with Idem, child and where married, spouse of child

the written consent of the spouse except that the court may dispense with the consent of the child if the court is satisfied that, having regard to all the circumstances of the case, the consent would not be appropriate. R.S.O. 1970, c. 73 (4); 1975, c. 1, s. 31 (1).

Where
consent
not
given

(7) Where a consent required by this section has not been given, the court upon application by the applicant for the adoption may dispense with the requirement if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the requirement be dispensed with.

Notice

(8) The court shall not dispense with a consent required under this section, except a consent required under subsection 6, until the court is satisfied that the person from whom the consent is required has had notice of the application for adoption and notice of the application to dispense with the consent, or that reasonable effort has been made, in the opinion of the court, to cause such person to be notified. R.S.O. 1970, c. 64, s. 73 (5, 6).

Where
consent
given

(9) Where a consent required by this section has been given, it may after the twenty-one days referred to in subsection 2 and subject to subsections 10 and 11, be withdrawn by the person giving it only if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the consent be withdrawn. R.S.O. 1970, c. 64, s. 73 (7); 1975, c. 1, s. 31 (2).

Consent
not to be
withdrawn

(10) Subject to subsection 11, an application to the court for the withdrawal of a consent given under subsection 2 shall not be made after the child has been placed for adoption by an adoption agency so long as the child remains in the care of the person with whom the child was placed for adoption.

Review
by
Director

(11) Where all the consents required under subsection 2 have been given and, after the expiration of one year from the giving of the consents under subsection 2 or from a review of the child's status under this subsection, whichever is later, whether or not the child has been placed for adoption, an order for the adoption of the child has not been made, the adoption agency shall notify a Director and the Director or any person authorized by the Director shall review the status of the child and after such review the Director or such person, having regard to the best interests of the child, may,

- (a) where the adoption agency is not a society direct the adoption agency to place the child into the

care and custody of a society designated by the Director;

- (b) where the child is in the care, custody and control of a society, direct the society to apply under Part II to determine whether the child is a child in need of protection;
- (c) where the child is in the care of the person with whom the child has been placed for adoption, confirm the placement of the child with that person or give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency is authorized to make, give or take under this Act;
- (d) where the child leaves or is removed from the care of the person with whom the child has been placed for adoption, give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency is authorized to make, give or take under this Act; or
- (e) direct the adoption agency to return the child to the care of the person giving the consent under subsection 2 where that person had charge of the child at the time the consent was given and has agreed to receive the child back into care, and upon giving such direction, every consent to the adoption given under subsection 2 shall be deemed to be withdrawn.

(12) Where an application is made to a judge under Part II pursuant to clause *d* of subsection 11, the child shall be brought before a judge as if the child had been apprehended pursuant to section 21 or 22 and the child may be dealt with by the judge in the same manner as though the child were a child apparently in need of protection. *New.* Application to judge

(13) No consent required by this section is invalid by reason only of the fact that the person giving it is under eighteen years of age except that, in the case of a consent required under subsection 2 given by a person under eighteen years of age, the consent shall be approved by the Official Guardian. R.S.O. 1970, c. 64, s. 73 (8); 1971, c. 98, s. 4, Sched., par. 6, *amended.* Consent not invalid by reason of age

(14) Subject to a direction of a Director under subsection 11 to the child, no person shall, Interference with child, etc.

- (a) visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or

interfere with a child who has been placed for adoption by an adoption agency; or

- (b) visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a person or persons with whom the child has been placed for adoption,

after the giving of all the consents under subsection 2, and before an order for the adoption of the child has been made, without the consent in writing of the adoption agency.

No placement where outstanding access order

(15) Upon the placement of a child under eighteen years of age by an adoption agency for the purpose of adoption, any outstanding order of access with respect to the child, other than an order of access made under this Act, shall terminate. *New.*

Affidavit of execution

64. An affidavit of execution in the prescribed form shall be attached to every consent required under this Part and to every cancellation under subsection 2 of section 63. R.S.O. 1970, c. 64, s. 74, *amended.*

Jurisdiction of courts

65.—(1) The court in the county or district in which either the applicant or the child sought to be adopted resides at the time the application for an adoption order is filed has jurisdiction to make the order. R.S.O. 1970, c. 64, s. 70 (1); 1975, c. 1, s. 29 (1), *amended.*

Application to be heard *in camera*

(2) An application for an adoption order shall be heard and determined *in camera*. R.S.O. 1970, c. 64, s. 70 (2), *amended.*

Transfer of proceedings

(3) Where the court referred to in subsection 1 is satisfied that there is preponderance of convenience in favour of hearing the application for adoption in another county or district, the court may, at any time after the application is made and before the hearing of the application, transfer the proceedings to a court in any other county or district.

Affidavit evidence

(4) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. *New.*

Stale applications

(5) Where an application for an adoption order is not heard by the court within the twelve months next following the signing of the application by the applicant, it shall not be proceeded with unless the court otherwise directs, but another application may be made in its stead. R.S.O. 1970, c. 64, s. 70 (3), *amended.*

Guardian *ad litem*

(6) For the purpose of an application for an order for the adoption of a child under eighteen years of age, the court

may appoint a person to act as the guardian *ad litem* of the child before or upon the hearing of the application if in the opinion of the court such appointment is required to protect the legal interests of the child in the proceedings and the court may make such order as to the costs of the guardian *ad litem* as the court deems appropriate in the circumstances. 1975, c. 1, s. 29 (2).

66. The court may make an order for the adoption of any child resident in Ontario upon application therefor being made in the prescribed manner by a person resident in Ontario. R.S.O. 1970, c. 64, s. 71, *amended*. When order may be made

67.—(1) The court shall not make an adoption order for a child who is under eighteen years of age and who has not been married unless the child has been placed with an applicant for adoption by an adoption agency. Where order not to be made

(2) Subsection 1 does not apply to an application for adoption of a child, Application

(a) by a relative of the child; or

(b) by the spouse of the child's parent. *New.*

68.—(1) The court shall not make an adoption order, Where order not to be made

(a) where the applicant is under eighteen years of age or, in the case of a joint application by a husband and wife, where the husband or wife is under eighteen years of age;

(b) where the applicant is unmarried, a widow, a widower, a divorced person or living apart from his or her spouse; or

(c) where the child being adopted is eighteen or more years of age or is under eighteen years of age and has been married,

unless the court is satisfied that there are special circumstances that justify the making of the order. R.S.O. 1970, c. 64, s. 72 (1); 1971, c. 98, s. 4, Sched., par. 6; 1975, c. 1, s. 30 (1), *amended*.

(2) Subsection 1 does not apply to an application for adoption of a child by a spouse of a parent of the child. 1975, c. 1, s. 30 (2), *amended*. Application of subs. 1

(3) Except in the case of a joint application by a husband and wife, an order shall not be made for the adoption of a child by more than one person. R.S.O. 1970, c. 64, s. 72 (2). Adoption by more than one person

Consent of
adopting
spouse

(4) An adoption order shall not be made upon the application of a husband or wife without the written consent of the spouse, provided that the court may dispense with such consent where the spouses are living apart and where the court considers it in the best interests of the child that the consent be dispensed with. R.S.O. 1970, c. 64, s. 72 (3); 1975, c. 1, s. 30 (3), *amended*.

Statement
of Director

69.—(1) Where an application is made to the court for the adoption of a child who is under eighteen years of age and who has not been married, a Director shall file with the court prior to the hearing of the application a statement in writing,

- (a) that the child has resided for six months or more with the applicant and, having regard to the best interests of the child, recommending whether or not, in the opinion of the Director, an order for the adoption of the child should be made; or
- (b) that the applicant is an appropriate person to adopt the child and recommending that for reasons set out in the statement it is in the best interests of the child that the period of residence be dispensed with and an order for the adoption of the child should be made,

and the Director, in making a recommendation under clause *a* or *b*, may bring to the attention of the court any additional circumstances of the case that, in the Director's opinion, the court may wish to take into account before making or refusing the order.

Filing of
notice

(2) Where a Director recommends that an adoption order should not be made, the Director shall file a copy of the statement under subsection 1 with the court at least thirty days prior to the hearing and the Director shall cause a copy of the statement to be served upon the applicant within seven days after the Director filed the statement with the court.

Statement
of local
director

(3) In the case of a child referred to in subsection 1 who has been placed for adoption by a society, the statement referred to in clause *a* of that subsection is sufficient if it is made by the local director.

Report

(4) A Director or local director before making a recommendation under subsection 1 shall obtain a report of a homestudy of the applicant made by the society with jurisdiction in the area where the applicant resides, or by such

other person who, in the opinion of the Director or local director, as the case may be, is qualified to make the home-study. 1975, c. 1, s. 32, *amended*.

(5) Subsections 1 and 4 do not apply to an application ^{Application} for adoption of a child,

(a) by a relative of the child; or

(b) by the spouse of the child's parent,

unless the court hearing the application so directs. *New*.

70. The court before making an adoption order shall be ^{Duty of} satisfied, ^{court}

(a) that every person who has given a consent under this Part understands the nature and effect of the adoption order; and

(b) that the order will be in the best interests of the child. R.S.O. 1970, c. 64, s. 77.

71. Upon the hearing of an application for adoption, ^{Procedure} where the child is seven or more years of age, the court ^{on} shall inquire into the capacity of the child to appreciate ^{application} the nature of the application and shall, where practicable, hear the child. R.S.O. 1970, c. 64, s. 76.

72.—(1) Upon an adoption order being made and unless ^{Surname} the adoption order provides for the adopted child to retain his or her surname, the adopted child shall assume the surname of the adopting parent.

(2) In an adoption order, the court may in its discretion ^{Given} change the given name or names as the adopting parent ^{names} desires, and thereafter the adopted child is entitled to and is to be known by the name or names so given. R.S.O. 1970, c. 64, s. 78, *amended*.

73. If the adopted child was born outside marriage, ^{Born} that fact shall not appear upon the adoption order. R.S.O. ^{outside} 1970, c. 64, s. 79, *amended*. ^{marriage} ^{not to} ^{appear}

74.—(1) The documents used upon an application for an ^{Papers to} adoption order shall be sealed up and filed in the office of ^{be sealed} the court by the proper officer of the court and shall not ^{up} be open for inspection except upon an order of the court or the written direction of a Director.

Trans-
mission
of order

(2) Within thirty days after the making of an adoption order, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit,

- (a) the original order to the adopting parent;
- (b) one certified copy to a Director;
- (c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and
- (d) where the adopted child is a member of a band within the meaning of the *Indian Act* (Canada), one certified copy to the Registrar under that Act.

R.S.C. 1970,
c. I-6

R.S.O. 1970, c. 64, s. 80, *amended*.

Interim
order

75.—(1) Upon an application for an adoption order, the court, after considering any recommendation made by a Director, may postpone the determination of the application and make an interim order giving the custody of the child sought to be adopted to the applicant for a period not exceeding one year by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the child and otherwise as the court thinks fit. R.S.O. 1970, c. 64, s. 81 (1); 1975, c. 1, s. 33 (1).

Idem

(2) An interim custody order is not an adoption order.

Consents

(3) All consents required for an adoption order are necessary for an interim custody order, subject to a like power in the court to dispense with any such consent requirement. R.S.O. 1970, c. 64, s. 81 (2, 3).

Residence
outside
Ontario

(4) Where an applicant has obtained an interim custody order and subsequently takes up residence outside Ontario, the court may nevertheless make the adoption order applied for if a Director makes a recommendation in favour of the order under section 69. R.S.O. 1970, c. 64, s. 81 (4); 1975, c. 1, s. 33 (2).

Order
final

76. Subject to section 77, an order granting an adoption shall be final and irrevocable and shall not be questioned or reviewed in any court of competent jurisdiction whether or not the order was made with or without jurisdiction so long as it purports to be made by a person upon whom the authority to make the order has been conferred. *New*.

77.—(1) An applicant for an adoption order, or a Director or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 69, may appeal to the Court of Appeal from the decision of the court granting or refusing an adoption order. Appeal

(2) An applicant for an adoption order, a Director, or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 69, or a person who has given consent under subsection 2 of section 63 may appeal to the Court of Appeal from the decision of the court made pursuant to subsection 10 of section 63, granting or refusing the withdrawal of a consent to the adoption. Idem

(3) An appeal under subsection 1 or 2 shall be heard *in camera* and notice of the appeal shall be served on a Director. Appeal
in camera

(4) A notice of appeal under subsection 1 or 2 shall be served within thirty days of the making of the decision being appealed and no extension of the time for serving the notice or making the appeal shall be granted. Notice *New.*

78. An adoption order or an interim custody order may be made in respect of a child who has previously been the subject of an adoption order, and the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the child for the purposes of this Part. R.S.O. 1970, c. 64, s. 82. Effect of
order on
previous
adoption

79.—(1) For all purposes, as of the date of the making of an adoption order, Status of
adopted
child

(a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and

(b) the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adopting parent,

as if the adopted child had been born to the adopting parent and all the rights and responsibilities of a legal guardian of the child that have vested in any adoption agency pursuant to subsection 3 of section 63 are terminated. R.S.O. 1970, c. 64, s. 83 (1), *amended.*

(2) The relationship to one another of all persons whether the adopted child, the adopting parent, the kindred of the Application
of subs. 1
to relation-
ship of
persons

adopting parent, the parent before the adoption order was made, the kindred of that former parent or any other person shall, for all purposes, be determined in accordance with subsection 1. R.S.O. 1970, c. 64, s. 83 (2).

References
in will or
other
document

(3) In any will or other document, whether heretofore or hereafter in existence, and whether or not the maker of the will or other document was alive at the date of the coming into force of this section, unless the contrary is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of the person's own adoption or the adoption of another person. 1975, c. 1, s. 34 (1), *amended*.

Application
of section

(4) This section applies and shall be deemed to have always applied with respect to any adoption made under any legislation heretofore in force, but not so as to affect,

(a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and

(b) any interest in property or right that has indefeasibly vested before the coming into force of this section. 1975, c. 1, s. 34 (2).

Exception

(5) Subsections 1 and 2 do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove any person from a relationship in consanguinity that, but for this section, would have existed. R.S.O. 1970, c. 64, s. 83 (4).

Effect of
adoptions
under other
laws

80.—(1) An adoption effected according to the law of any other province or territory of Canada or of any other state or country or part thereof, before or after the commencement of this section, has the same effect in Ontario as an adoption under this Act. R.S.O. 1970, c. 64, s. 85.

Idem

(2) Where, as a requirement of the making of an order or orders of a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof, that effects an adoption of a child according to the laws of the jurisdiction where the order or orders were made, any statement, consent, declaration or similar document in writing is made by a person, organization, province, state, country or legal representative of any

of them, in whom the rights and responsibilities of guardianship in respect of the child have been legally vested, such statement, consent, declaration or similar document in writing shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

81. Where, in the opinion of the Minister, the best Subsidies interests of a child may be served by granting a subsidy to the adopting parent of the child, the Minister may out of moneys appropriated therefor by the Legislature authorize payments, from time to time and upon such terms and conditions as the Minister may prescribe, of such amounts as are necessary for such purposes. *New*.

PART IV

GENERAL

82. The Lieutenant Governor in Council may make regu- Regulations lations,

1. prescribing additional powers and duties of a Director;
2. prescribing the records that shall be kept by societies and the returns and reports that shall be made under this Act;
3. requiring societies to provide such information and to make such returns and reports as are prescribed and prescribing the persons or agencies to whom such information and returns are to be given and reports are to be made;
4. prescribing the standard of services that societies shall provide;
5. prescribing provisions to be included in the by-laws of societies;
6. defining "net expenditures";
7. prescribing fees and other charges that shall be levied or made for services by societies under Part II and classes of such fees and charges and the terms and conditions under which any such fee or charge or class thereof shall be made;
8. prescribing the manner of determining the proportion of an approved estimate that is referable to

each municipality in the area served by a society for the purposes of subsection 6 of section 8;

9. prescribing additional powers and duties of a child welfare review committee appointed under section 12;
10. determining the amounts of payments under subsections 1 and 2 of section 13 and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
11. providing for payments to reimburse a municipality for all or any part of any increase in its financial obligations to a society under this Act and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
12. determining the costs to municipalities and to societies for the purposes of section 14;
13. determining the amounts of payments to be made to municipalities and societies under section 14 and providing for classes of such payments and the terms and conditions under which such payments or class or classes thereof may be made;
14. prescribing the times and manner of payment of capital grants under section 14;
15. prescribing "special needs" of children,
 - i. for which joint facilities may be established under section 16, and
 - ii. for the purpose of subsection 3 of section 25;
16. prescribing terms and conditions to be included in any agreement or class of agreement entered into under section 25;
17. for the purposes of subsection 9 of section 25, prescribing the manner of determining the nature and degree of a developmental handicap that would render a child incapable of consenting to an agreement made under that section;

18. governing the construction, alteration, renovation, extension and furnishing and equipping of receiving homes;
19. prescribing the information that shall be recorded in the register established under subsection 3 of section 46;
20. prescribing the period or periods of time that information or any class thereof shall be maintained in the register established under subsection 3 of section 46 and providing for the expunging of information or any class thereof from the register;
21. prescribing rules under which applications under this Act or any Part thereof are to be made, and governing generally all matters of procedure under this Act or any part thereof;
22. fixing fees, costs, charges and expenses payable on proceedings under this Act or any Part thereof and providing for dispensing with the payment of such fees, costs, charges and expenses where, owing to lack of means or for any other reason, the court considers such action advisable;
23. prescribing rules and standards governing the establishment and operation of adoption agencies;
24. governing the issuance, renewal and expiration of a licence required under section 54 and the fees payable by an applicant for a licence or renewal thereof;
25. providing for the inspection of books of account and other records of adoption agencies;
26. governing the qualifications of persons employed with or involved in the management and operation of adoption agencies;
27. requiring adoption agencies to provide such information and to make such returns and reports as are prescribed and prescribing persons or agencies to whom such information and returns are to be given and reports are to be made;
28. prescribing the records that shall be kept by adoption agencies and the returns and reports that shall be made under this Act;

29. prescribing states and countries for the purposes of section 52;

30. prescribing forms and providing for their use. R.S.O. 1970, c. 64, s. 89; 1971, c. 109, s. 7; 1975, c. 1, s. 37 (1-6), *amended*.

Inter-
provincial
agreements

83. The Minister, with the approval of the Lieutenant Governor in Council, may on behalf of the Government of Ontario make agreements with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services to or the care or protection of children. *New.*

Service

84.—(1) Unless otherwise provided for in this Act or the regulations, any notice or order required to be given, delivered, filed or served under this Act or the regulations is sufficiently given, delivered, filed or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the person's last known address.

Idem

(2) Where service is made by mail, the service shall be deemed to be made on the tenth day after the day of mailing unless the person on whom service is being made establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date.

Idem

(3) Where any notice is required to be given, delivered, filed or served on a Director under this Act or the regulations or a certified copy of an order is required to be transmitted to a Director under clause *b* of subsection 2 of section 74 such notice or certified copy is sufficiently given, delivered, filed, served or transmitted, as the case may be, on or to a Director if the notice or certified copy is given, delivered, filed, served or transmitted on or to any of the Directors appointed pursuant to subsection 1 of section 2. *New.*

Reference
to parent

85. Except for subsections 1 and 4 of section 25, a reference in this Act or the regulations to "a parent" or "the parent" shall be deemed to be a reference to every parent of the child unless the context otherwise requires. *New.*

Offences

86.—(1) Every person who,

(a) knowingly furnishes false information in any application under this Act or in any statement, report or

return required to be furnished under this Act or the regulations;

- (b) fails to comply with an order of the court under subsection 4 of section 33;
- (c) fails to comply with an order made by a Director under subsection 17 of section 46;
- (d) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with any person acting in the performance of the person's duties under section 21, 22 or 23;
- (e) is a parent and who permits his or her child to contravene any provision of subsection 1 or 2 of section 48;
- (f) contravenes any provision of,
 - (i) section 43,
 - (ii) subsection 2 of section 45,
 - (iii) subsection 4, 7 or 8 of section 46,
 - (iv) subsection 1 of section 47,
 - (v) subsection 7 of section 51,
 - (vi) subsection 14 of section 63,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation or in such furnishing of false information, failure, hindrance, obstruction or interference or attempted hindrance, obstruction or interference or contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or, except for a contravention of subsection 2 of section 45, to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes the provisions of,

Idem

- (a) subsection 2 of section 44; or
- (b) subsection 1 or 2 of section 59,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) Every person who contravenes the provisions of subsection 3 of section 44 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both, and for any subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(4) Every person who contravenes the provisions of subsection 1 of section 54 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 for each day on which such offence continues or to imprisonment for a term of not more than three years, or to both.

Idem

(5) Every person who contravenes the provisions of subsection 1 of section 61 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three years, or to both. *New.*

Injunction
proceedings

87.—(1) The society having the care, custody or supervision of the child may apply to the Supreme Court by originating notice for an order enjoining any person acting in contravention of section 43, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

Idem

(2) The adoption agency that placed the child for adoption may apply to the Supreme Court by originating notice for an order enjoining any person acting in contravention of subsection 14 of section 63, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

(3) A Director may apply to the Supreme Court by ^{Idem} originating notice for an order enjoining any person acting in contravention of subsection 1 of section 54, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgement of the Supreme Court.

(4) Any person may apply to the Supreme Court for an ^{Idem} order varying or discharging any order made under subsection 1, 2 or 3. *New.*

88. The following are repealed:

Repeals

1. *The Child Welfare Act*, being chapter 64, of the Revised Statutes of Ontario, 1970.
2. *The Child Welfare Amendment Act, 1972*, being chapter 109.
3. *The Child Welfare Amendment Act, 1973*, being chapter 75.
4. *The Child Welfare Amendment Act, 1975*, being chapter 1.
5. Paragraph 6 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98.

89. This Act comes into force on a day to be named by ^{Commence-} proclamation of the Lieutenant Governor. ^{ment}

90. The short title of this Act is *The Child Welfare Act*, ^{Short title} 1978.

An Act to revise
The Child Welfare Act

1st Reading

June 8th, 1978

2nd Reading

3rd Reading

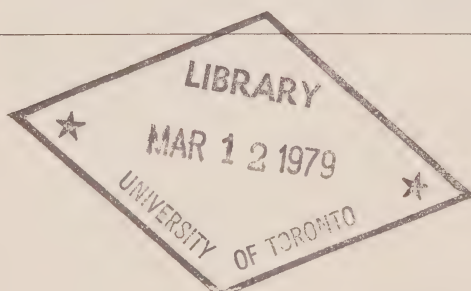
THE HON. KEITH C. NORTON
Minister of Community and
Social Services

(Government Bill)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to revise The Child Welfare Act

THE HON. KEITH C. NORTON
Minister of Community and Social Services



(Reprinted as amended by the Committee of the Whole House)

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EXPLANATORY NOTES

The purpose of the Bill is to repeal, up-date and extend the application of *The Child Welfare Act*.

Some features of the Bill are as follows:

1. *Best Interest Test*

A definition of "best interest" has been included for use by judges as a criterion in choosing among the various orders of disposition that can be made in protection hearings. (s. 1 (b))

2. *Society Budgets*

Provision is made to allow the Ministry to establish the amount of a society budget, where the budget has not been submitted or where municipal approval has not been given within the prescribed periods of time. (ss. 8 to 12)

3. *Capital Grants Payable to Societies*

The discretion of the Ministry to determine the amount of capital grants payable to societies is broadened by deleting minimum percentages prescribed in the Act. (s. 14)

4. *Definition of "Parent"*

For the purposes of determining which parent should be notified of protection hearings and those natural parents whose consents are required for adoption, the existing definitions will be changed to include a wider category of putative fathers. The new definitions bring this legislation into line with the provisions of *The Children's Law Reform Act, 1978*. The existing right of the court to dispense with notice of hearing in protection proceedings on a putative father where the putative father can be located will be deleted. (s. 19 (1) (e)) (s. 69 (1) (c))

5. *"Place of Safety"*

"Place of Safety" is re-defined to ensure that a child who is apprehended is kept in a place supervised or approved by a Director of Child Welfare until the child can be brought before a court. The new definition excludes training schools. (s. 19 (1) (f))

6. *Transfer of Proceedings to Another Court*

The court where a child is taken into care may transfer the proceedings to a family court in another territorial jurisdiction where a "preponderance of convenience" can be shown. (s. 19 (3))

7. *Independent Legal Representation of Children*

The court may direct that independent legal representation be provided for a child in protection proceedings. (s. 20)

8. *Apprehension of Children*

A person or agency other than a society may apply to a court and the court may order a society to apprehend a child apparently in need of protection and to bring the child before a court where the matter has previously been reported to the society and the society either refused or delayed taking steps to apprehend the child. (s. 22 (2))

9. *Care by Agreement*

The present provisions for non-ward agreements are amended to,

- (a) reduce the maximum period of an agreement for temporary care from 24 months to 12 months;
- (b) require the consent of a child over 12 years of age, except a child with a developmental handicap, before entering into an agreement in respect of the child. A child over 12 years of age will have the right to seek a review of his or her own agreement. Such an agreement will terminate 21 days after the child seeks a review unless, in the interim, a further agreement has been arranged;
- (c) provide that an agreement for services may be entered into with a child between 16 and 18 years of age with the consent of the Director. (s. 25)

10. *Detention of Wards*

Where a ward of a society leaves or is removed from the society's care without permission and is apprehended, and taken to an observation and detention home that is approved as a place of safety, such detention shall be confirmed by the court and may not exceed 30 days. (s. 27 (2))

11. *Evidence Needed to Establish Need for Protection*

Evidence of past conduct of a parent or guardian towards the child or any other child in the care of the parent or guardian will be admissible at a hearing in order to determine the need to remove the child from the parent or guardian. (s. 28 (4))

12. *Foster Parents*

A foster parent who immediately prior to the hearing has been caring for a child on behalf of a society for a continuous period of more than 6 months will be entitled to receive notice of a court hearing affecting the child. (s. 28 (7, 9))

13. *Adjournments*

An adjournment of a protection hearing will be limited to 30 days with power to the court to extend the period of adjournment. The right of a society to custody of a child during the adjournment is clarified and the court is empowered to alter custody arrangements during the adjournment period. (s. 28 (13))

14. *Pre-Disposition Assessments*

The court is empowered to order the attendance of a child or a parent of the child for a medical, emotional, developmental or social assessment after the child is found to be in need of protection and before an order of disposition is made. The right of various persons to be provided with a copy of the assessment report is provided for. (s. 29)

15. *Supervision Order*

The authority of a judge to include reasonable terms and conditions relating to the method of supervision is clarified, including the judge's authority to vary or terminate such conditions. (s. 30 (4))

16. *Presence of Child in Court*

A child who is over 10 years of age and who is the subject of a protection hearing is given the right to be present at the hearing unless the court is satisfied that the child's presence will be injurious to the emotional health of the child. Where a child is under 10 years of age, the child shall be excluded from the hearing unless the judge allows the child to be present. (s. 33)

17. *Access Orders*

An order of access may be made either in separate proceedings or as part of other proceedings under Part II. A child over 12 years of age may apply to the court for an order respecting access to the child by any person, but applications for access may be made only at six-month intervals. A society must apply to the court to terminate any outstanding order of access before a Crown ward can be placed for adoption. An access order made under other legislation with respect to a child who is not a ward will terminate when the child is placed for adoption. (ss. 35, 38 (1, 2, 8), 69 (15))

18. *Reasons for Decisions in Protection Hearings*

Reasons shall be part of the record of the court and shall include the specific matters that the society proposes for the child and where the child is removed from the parent, a statement as to why the child cannot be adequately protected without such removal. (s. 36)

19. *Order of Society Wardship*

The maximum period of 24 months for a society wardship will include any period of adjournment, any period during which the child was in care under a non-ward agreement and any period pending appeal of the order of society wardship. The expiration of the 24-month period before the date of an adjourned hearing will not deprive the court of jurisdiction to make a further order, other than an order of society wardship. (s. 37)

20. *Status Reviews*

- (a) A child 12 or more years of age in the care of a society may apply to the court for a review of his or her status. The court can dispense with the right of a child under 10 years of age to receive notice of a hearing to review the child's status. (ss. 32 (4), 37 (2), 38 (1))
- (b) The right of a child and the child's parents to apply for a status review is limited to six-month intervals. (ss. 32 (4), 37 (2), 38 (1))
- (c) The Director is required to review the status of each Crown ward at least every two years and the Director after any such review may order the society to apply to the court for a review of the child's status. (s. 39)
- (d) A notice of intention to adopt previously given to a society by a prospective adoptive parent will no longer be required and the Crown wardship will not be permitted to terminate after a child is placed for adoption until an adoption order is made. No further notice to the natural parent of the child will be required after such placement occurs, unless the Director after reviewing the child's status directs a status review by the court. (s. 38 (7))

21. *Appeals in Protection Proceedings*

Most of the procedural requirements relating to appeals from orders of a family court in protection proceedings have been deleted. It is intended to include these requirements in the rules of the court. (s. 43)

A society's right to retain custody of a child pending the hearing of the appeal is clarified, but the appeal judge may make an order for temporary custody of the child by some other person or agency. (s. 43 (2-6))

The prescribed period for commencing an appeal from a decision relating to Crown wardship cannot be extended by the appeal court after the ward is placed for adoption. (s. 43 (7))

22. *Child Abuse*

A definition of "abuse" is added for reporting purposes. (s. 47 (1))

The reporting of child abuse by those receiving information in their professional or official capacity is made mandatory with penalties for non-compliance. The more general requirement for anyone to report abuse and other forms of neglect will be retained but without a penalty. (s. 49 (1, 2))

The Official Guardian and, in the case of a child in the care of a society, a children's aid society, will be given authority to bring legal proceedings on behalf of a child suffering abuse to recover damages or other compensation. Such proceedings will be brought only if such proceedings are considered to be in the best interests of the child. (s. 51)

The maximum age limit of ten for a child who is left unattended has been removed from the Act but the onus of establishing that reasonable supervision has been provided for a child under 10 years of age who was left unattended is on the accused. (s. 47 (3, 5))

A society investigating a suspected child abuse may apply to the court for access to records that would assist in the investigation. (s. 55)

23. *Abuse Registry*

A provincial abuse registry for receiving reports from societies is established under the control of a Director of Child Welfare appointed by the Minister. Access to the registry would be restricted to specific agencies and persons. Suspected abusers whose names appear in the registry will be notified and will be given an opportunity to inspect and seek correction or expungement of information in the registry. An appeal to the courts is given from a refusal by the Director to amend the registry. Information identifying those who report child abuse to a society would be excluded from the registry. The records relating to the registry would not be admissible in any other court proceedings. (s. 52)

24. *Curfew and Street Trades*

The existing prohibition against boys between 12 and 16 years of age from engaging in street trades at night has been extended to cover all children under the age of 16 years. (s. 54)

25. *Access to a Hearing by Public and News Media*

The provisions of the Act that exclude the public and others from court hearings in protection cases are re-enacted to allow an expanded range of exceptions to be made to this general rule, in particular, the

Press and other communication media are given the right to have at least two representatives in any court hearing under this Part, unless the presiding judge excludes them, and the judges must give reason for such exclusion.

The prohibition against publishing information that would identify the parent or child at a hearing is extended to cover any member of the child's family and to anybody charged with a criminal offence under this Part.

These restrictions will also apply to tribunals hearing appeals under this Part. (s. 57)

26. Licensing of Adoption Agencies and Adoption Placements

- (a) Placements for adoption, except for adoption by close relatives and step-parents, will have to be routed through adoption agencies or children's aid societies. An exception to this requirement will allow a licence to be issued to a person other than an adoption agency to place a single child for adoption under conditions to be prescribed by regulations and in the licence itself. All adoption agencies that place children for the purposes of adoption (other than children's aid societies) are required to be licensed. (ss. 60 to 65)
- (b) The approval of a Director is required *prior* to the placement of any child under 18 years of age for the purpose of adoption, except placements with close relatives or placements by societies. The Director shall in such cases require a homestudy before a placement is made. (s. 65 (3-6))
- (c) The Director may intervene where any person has been refused placement for adoption or a child placed with the person for adoption has been removed by the agency making the placement. (s. 66)
- (d) Unauthorized interference with a child who is on adoption placement is made an offence. (ss. 69 (14), 93 (1) (f) (vi))

27. Adoption Consents

- (a) The Official Guardian must be satisfied that a consent to adoption by a natural parent who is a minor reflects the true informed wishes of the natural parent. (s. 69 (13))
- (b) Where a child is placed for adoption through an adoption agency with the consent of the natural parents, guardianship of the child will vest in the agency when the consent is given and the consent may not be withdrawn and the adoption may proceed without further notice to the natural parents. However, the Director must, once a year, review the status of each child placed for adoption through an agency where the adoption has not yet been completed, and after any such review, the Director may,
 - (i) confirm the placement,
 - (ii) send the child back to his or her natural parents, or
 - (iii) direct that the child be placed with a children's aid society and that the society apply for Crown wardship. The natural parents will have notice of the application for Crown wardship in such circumstances. (s. 69 (11))

28. *Adoption Orders*

- (a) The jurisdiction to make adoption orders is transferred from the county court to the Provincial Court (Family Division). (s. 71)
- (b) A homestudy and a Director's statement before an adoption order is made will no longer be required where the proposed adoption is by a close relative or by a step-parent unless the judge making the order otherwise directs. (s. 75 (5))
- (c) An adoption order is final and irrevocable subject only to the statutory appeal. (s. 83)
- (d) A statutory right of appeal is given against an adoption order or a refusal to make an order but no extension of statutory time required for filing the appeal can be granted. (s. 84)
- (e) The grounds for granting an adoption order for an adult have been broadened. This would allow, at the discretion of the court, the adoption of an adult with a developmental handicap by a family who have been caring for that person. (s. 74)

29. *Adoption Subsidy*

The Minister may grant a subsidy to an adopting parent. (s. 88)

30. *Interprovincial Agreements*

The Minister is authorized to enter into agreements on behalf of the Province with other provinces relating to the care of children. (s. 90)

BILL 114

1978

An Act to revise The Child Welfare Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1. In this Act,

Interpre-
tation

- (a) "approved estimate" means an estimate of net expenditures of a society finally approved under sections 8 to 12;
- (b) "best interests of the child" means the best interests of the child in the circumstances having regard, in addition to all other relevant considerations, to
 - (i) the mental, emotional and physical needs of the child and the appropriate care or treatment, or both, to meet such needs,
 - (ii) the child's opportunity to enjoy a parent-child relationship and to be a wanted and needed member within a family structure,
 - (iii) the child's mental, emotional and physical stages of development,
 - (iv) the effect upon the child of any disruption of the child's sense of continuity,
 - (v) the merits of any plan proposed by the agency that would be caring for the child, compared with the merits of the child returning to or remaining with his or her parent,
 - (vi) the views and preferences of the child, where such views and preferences can reasonably be ascertained,

- (vii) the effect upon the child of any delay in the final disposition in the proceedings,
- (viii) any risk to the child of returning the child to or allowing the child to remain in the care of his or her parent;
- (c) "court", unless otherwise indicated, means a provincial court (family division) or the Unified Family Court;
- (d) "Director" means an employee of the Ministry appointed by the Minister as a director for all or any of the purposes of this Act;
- (e) "judge", unless otherwise indicated, means a provincial judge presiding in a provincial court (family division) or in the Unified Family Court;
- (f) "local director" means the local director of a society appointed under this Act;
- (g) "Minister" means the Minister of Community and Social Services;
- (h) "Ministry" means the Ministry of Community and Social Services;
- (i) "municipality" means the corporation of a county, city, or separated town or a district, metropolitan or regional municipality, but does not include a city or separated town in a district, metropolitan or regional municipality, and in a territorial district means the corporation of a city, town, village or improvement district;
- (j) "prescribed" means prescribed by the regulations;
- (k) "regulations" means the regulations made under this Act;
- (l) "society" means a children's aid society approved by the Lieutenant Governor in Council under this Act. R.S.O. 1970, c. 64, s. 1; 1972, c. 1, s. 19 (3); 1975, c. 1, s. 1, *amended*.

PART I

OFFICERS, SOCIETIES

Appointment
of Director

2.—(1) The Minister may appoint one or more persons to act as a Director. *New.*

Duties of
Director

(2) A Director,

(a) shall advise and supervise societies;

- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;
- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of any place in which a child in the care of a society is placed;
- (e) shall prepare and submit an annual report to the Minister;
- (f) shall keep books of account of all moneys received and disbursed by the Director;
- (g) may designate in writing a place or class of places as a place of safety for the purposes of this Act;
- (h) shall ensure that societies are providing the standard of services and following the procedures and practices prescribed under subsection 3 of section 6;
- (i) shall perform such other duties as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council. R.S.O. 1970, c. 64, s. 2 (1), *amended*.

(3) Where a Director is absent or there is a vacancy in the office of a Director, the powers and duties of the Director shall be exercised and performed by such employee of the Ministry as the Minister designates. R.S.O. 1970, c. 64, s. 2 (3), *amended*. Acting Director

3.—(1) The Minister may by order appoint a judge of the county or district court to make an investigation into any matter, Investigation

- (a) relating to any person in the care of a society; or
- (b) for the due administration of this Act,

and the person appointed shall report the result of the investigation to the Minister. R.S.O. 1970, c. 64, s. 3 (1); 1975, c. 1, s. 3, *amended*.

(2) For the purposes of an investigation under subsection 1, the judge has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1970, c. 64, s. 3 (2); 1971, c. 49, s. 18. Powers on investigation
1971, c. 49

4.—(1) Every society shall appoint a local director who shall be responsible to the board of directors of the society for the administration and enforcement of this Act and the Appointment of local directors

regulations in the area in which the society has jurisdiction, who shall co-operate with a Director to this end and who shall carry out such other duties as are required by the constitution, by-laws and directions of the society.

Powers
of local
directors,
etc.

1974, c. 109

R.S.O. 1970,
c. 374

(2) Every local director and every person designated by the board of directors of a society has for the purposes of this Act the powers of a school attendance counsellor under *The Education Act, 1974* and a police officer, and any one of them shall be deemed to be an officer within the meaning of section 10 of *The Public Authorities Protection Act*, and that section and the other provisions of that Act apply to them in the same manner and to the same extent as they do to the officers mentioned in that section. R.S.O. 1970, c. 64, s. 4, *amended*.

Police
assistance

5. A Director or a local director or any person acting under the authority of either of them may call for aid, in the performance of the duties of the Director, local director or the person, as the case may be, a member of the police force responsible for policing the area in which the aid is required. R.S.O. 1970, c. 64, s. 5, *amended*.

Establish-
ment of
societies
R.S.O. 1970,
c. 89

6.—(1) Every society shall be incorporated under *The Corporations Act* or a predecessor thereof as a corporation without share capital and shall be approved by the Lieutenant Governor in Council.

Purposes

- (2) Every society shall be operated for the purposes of,
- (a) investigating allegations or evidence that children may be in need of protection;
 - (b) protecting children where necessary;
 - (c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
 - (d) providing care for children assigned or committed to its care under this or any other Act;
 - (e) supervising children assigned to its supervision under this or any other Act;
 - (f) placing children for adoption;
 - (g) assisting the parents of children born or likely to be born outside of marriage and their children born outside of marriage; and
 - (h) any other duties given to it by this or any other Act. R.S.O. 1970, c. 64, s. 6 (1, 2), *amended*.

(3) Every society shall,

Standard
of services

(a) provide the standard of services relating to the purposes set out in subsection 2 of section 6; and

(b) follow the procedures and practices,

that shall be prescribed by the Minister.

(4) The by-laws of every society shall contain such provisions as the regulations prescribe, and a certified copy of the by-laws and any amendments thereto shall be filed with a Director forthwith after they are made, and no such by-laws or amendments shall come into operation until they have been approved by the Minister. R.S.O. 1970, c. 64, s. 6 (3, 4), *amended*.

By-laws

7.—(1) A society shall be governed by a board of directors composed of such municipal representatives as are determined under subsections 2 to 6 and the president, one or more vice-presidents, the secretary, the treasurer and such other officers and members as are determined, elected in such manner and for such period as the by-laws of the society provide.

Board of
directors

(2) Where a society has jurisdiction in but not outside a city, separated town or a district, regional or metropolitan municipality, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the city, separated town or the district, regional or metropolitan municipality.

Municipal
repre-
sentatives

(3) Where a society has jurisdiction in a county but not in a city or separated town, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the county.

Idem

(4) Where a society has jurisdiction in an area that includes a county or part of a county outside a city, separated town or a district, regional or metropolitan municipality,

Idem

(a) one municipal representative shall be appointed from among themselves by the council of each county, city, separated town and the district, regional or metropolitan municipality in the jurisdiction; and

(b) the council of the county, city, separated town or the district, regional or metropolitan municipality having the largest population as determined by the last revised assessment rolls shall appoint from among themselves such other municipal representa-

tives as are required, so that the total number of municipal representatives on the board of directors is not fewer than four.

Idem

(5) In subsections 2 to 4, a reference to a city or separated town does not include a city or separated town in a district, regional or metropolitan municipality.

Idem

(6) Where a society has jurisdiction in an area that includes a district or part of a district outside a city or a district, regional or metropolitan municipality, the municipal representatives shall be appointed in the manner determined under subsection 4, except that the district welfare administration board or the District Child Welfare Budget Board referred to in section 10, as the case may be, shall appoint the representatives required by subsection 4 to be appointed by the council of a county.

Executive committee

(7) The board of directors of a society shall pass a by-law providing for the election from among their number of an executive committee of nine members, consisting of the president, the treasurer, four municipal representatives and three other directors, and delegating to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the board.

Quorum

(8) A majority of the members of an executive committee constitutes a quorum. R.S.O. 1970, c. 64, s. 7, *amended*.

Estimate of expenditures

8.—(1) Every society shall before a date to be fixed each year by a Director, which date shall be no later than the last day of February in the year next following, prepare and file with the Director and, subject to subsection 2 and section 10, with each municipality in the area in which the society has jurisdiction, an estimate of its net expenditures, determined in accordance with the regulations, for operations for the year next following.

Minister may determine estimate

(2) Where a society has not filed an estimate in accordance with subsection 1 before the date prescribed therefor by the Director under that subsection, the Minister may at any time thereafter determine the amount of the estimate and cause the estimate to be filed with the society and, subject to subsection 3 of section 10, with each municipality in the area in which the society has jurisdiction.

Estimate deemed to be approved

(3) An estimate filed under subsection 2 shall, subject to subsections 1 and 2 of section 11, be deemed to be approved

by the Minister under subsection 1 of section 9, sixty days after it is filed.

(4) The council of every municipality with whom an estimate is filed in accordance with subsection 1 shall, subject to section 10 and subsection 1 of section 11, grant its approval to the estimate within sixty days from the date fixed by the Director. 1975, c. 1, s. 4, *part, amended*. Approval of estimate by council of municipality

(5) A municipality that has not, within the period of time fixed under subsection 4, Estimate deemed to be approved

(a) granted its approval to the estimate pursuant to subsection 4; or

(b) referred the estimate to a child welfare review committee under section 11,

shall, at the expiration of that period, be deemed to have granted its approval under subsection 4. *New*.

(6) Where a society has jurisdiction in more than one municipality, the portion of the estimate of net expenditures that is referable to each municipality shall, subject to subsection 10 of section 12, be determined in accordance with the regulations. 1975, c. 1, s. 4, *amended*. Proportion referable to each municipality

(7) Subsection 6 does not apply where a district welfare administration board has been established under *The District Welfare Administration Boards Act*. 1975, c. 1, s. 4, *part*. Exception R.S.O. 1970, c. 132

9.—(1) After an estimate has been filed with a Director pursuant to subsection 1 of section 8 and approved by the council of each municipality with whom it was filed, pursuant to subsection 4 of section 8, the Minister may approve the estimate as filed, or, subject to subsection 2 and subsection 2 of section 11, vary the amount of the estimate and approve the estimate as so varied. Approval by Minister

(2) Where the Minister intends to vary the amount of an estimate and to approve the estimate as so varied pursuant to subsection 1, the Minister shall, at least thirty days prior to approving the estimate, cause notice to be given of the Minister's intention to approve or to vary, as the case may be, to the society and to the council of each municipality in the area in which the society has jurisdiction or to the District Child Welfare Budget Board, as the case may be. 1975, c. 1, s. 5, *amended*. Notice by Minister

Interpre-
tation

10.—(1) In this section,

R.S.O. 1970,
c. 132

(a) “district” means a district as defined in *The District Welfare Administration Boards Act*;

(b) “municipality” means a municipality as defined in *The District Welfare Administration Boards Act*.
R.S.O. 1970, c. 64, s. 10 (1).

District
Child
Welfare
Budget
Board

(2) The councils of every municipality in a district in which a district welfare administration board has not been established shall, on or before the 1st day of October in each year, jointly appoint five persons to be a board known as the District Child Welfare Budget Board. R.S.O. 1970, c. 64, s. 10 (2); 1975, c. 1, s. 6 (1).

Approval of
estimates

(3) The estimate of net expenditures of a society in a district shall be approved by the District Child Welfare Budget Board in lieu of the approval by the municipal councils otherwise required by section 8. R.S.O. 1970, c. 64, s. 10 (3); 1975, c. 1, s. 6 (2), *amended*.

Reference
to child
welfare
review
committee

11.—(1) Where the council of a municipality or a District Child Welfare Budget Board does not agree with the amount of the estimate submitted to it by a society pursuant to subsection 1 of section 8 or with the portion of the estimate that is referable to the municipality, it may, on or before the expiration of the time fixed under subsection 4 of section 8 for the approval of the estimate by the municipality or the District Child Welfare Budget Board, as the case may be, request the Minister to refer the matter to a child welfare review committee. R.S.O. 1970, c. 64; s. 11 (1); 1975, c. 1, s. 7 (1), *amended*.

Idem

(2) Where a society, the council of a municipality or a District Child Welfare Budget Board, as the case may be, does not agree with the amount of the estimate,

(a) that has been filed pursuant to subsection 2 of section 8; or

(b) that the Minister intends to approve as varied pursuant to subsection 1 of section 9,

any one of them may,

- (c) in the case of an estimate referred to in clause *a*, before the expiration of sixty days after the filing of the estimate; and
- (d) in the case of an estimate referred to in clause *b*, after receiving notice of the Minister's intention pursuant to subsection 2 of section 9 and before the Minister's approval is given under subsection 1 of section 9,

request the Minister to refer the matter to a child welfare review committee. 1975, c. 1, s. 7 (2), *amended*.

(3) The provisions of subsection 2 apply with necessary ^{Idem} modifications to the council of a municipality or a District Child Welfare Budget Board that does not agree with the portion of the estimate referable to the municipality, where the estimate has been filed by the Minister pursuant to subsection 2 of section 8. *New*.

12.—(1) For the purposes of this section and section 11, ^{Composition of child welfare review committee} a child welfare review committee shall consist of,

- (a) one member appointed by the Minister, who shall be chairman;
- (b) one member appointed by the Ontario Association of Children's Aid Societies; and
- (c) one member appointed by the council of the municipality or the District Child Welfare Budget Board, as the case may be. R.S.O. 1970, c. 64, s. 11 (3), *amended*.

(2) Where a society has jurisdiction in more than one ^{Joint appointment to committee} municipality and there is no District Child Welfare Budget Board, the member to be appointed under clause *c* of subsection 1 shall be appointed jointly by those municipalities. R.S.O. 1970, c. 64, s. 11 (5), *amended*.

(3) Where the Minister receives a request under subsection 1 or 2 of section 11, the Minister shall forthwith appoint the member referred to in clause *a* of subsection 1 and cause notice to be given to the Ontario Association of Children's Aid Societies and the council of the municipality or the District Child Welfare Budget Board, as the case may be, to appoint, within ten days of the notice having been given, the members referred to in clauses *b* and *c* of subsection 1, respectively, and to inform the Minister forthwith of the names of the members appointed. *New*. ^{Appointment of members}

Notice

(4) The Minister shall, after being informed under subsection 3, forthwith cause notice of the names of the members of the child welfare review committee to be given to the parties concerned. R.S.O. 1970, c. 64, s. 11 (4), *amended*.

Failure to
appoint
member

(5) Where a party who receives a notice to appoint a member to the committee under subsection 3 fails to appoint a member within the time prescribed, the Minister shall, in the place of the party who failed to make the appointment, forthwith appoint the member to the committee. R.S.O. 1970, c. 64, s. 11 (6), *amended*.

Procedure

(6) A child welfare review committee shall be convened by the chairman thereof within ten days after all the members have been appointed and the committee shall determine its own procedures. R.S.O. 1970, c. 64, s. 11 (7), *amended*.

Evidence

(7) A child welfare review committee may receive such written or oral evidence from a Director, the society, the municipality or District Child Welfare Budget Board, as the case may be, or any other person as it in its discretion considers proper whether admissible in a court of law or not and may require the Director to present evidence and make submissions. R.S.O. 1970, c. 64, s. 11 (8), *amended*.

Idem

(8) A Director shall, when required by a child welfare review committee, present evidence and make submissions before the committee. *New*.

Findings of
committee

(9) A child welfare review committee shall review the evidence submitted to it and obtain any additional evidence or material it considers necessary and shall report its findings and make recommendations to the Minister within thirty days from the date that the committee first convenes and the findings and recommendations of the committee shall be made available to the parties concerned. R.S.O. 1970, c. 64, s. 11 (9).

Decision of
Minister

(10) After reviewing the findings and recommendations of a child welfare review committee, the Minister may approve the estimate filed under subsection 1 or 2 of section 8, vary the amount of the estimate and approve the estimate as so varied or determine the apportionment referred to in subsection 6 of section 8, as the case may be, and the decision of the Minister is final. R.S.O. 1970, c. 64, s. 11 (10), *amended*.

Notice

(11) Notice of the Minister's decision shall be given to the parties concerned within thirty days after the Minister receives the report and recommendations of a child welfare review committee. R.S.O. 1970, c. 64, s. 11 (11), *amended*.

13.—(1) There shall be paid out of the moneys appropriated therefor by the Legislature to each society an amount, determined in accordance with the regulations, of the approved estimate of the society. Payments
by Ontario

(2) Every municipality shall pay to the society having jurisdiction in the municipality an amount, determined in accordance with the regulations, of the portion determined in accordance with subsection 6 of section 8, of the approved estimate of the society that is referable to the municipality. Payments
by municipi-
ality

(3) Any amount payable to a society under this section in respect of an approved estimate, including advances before such estimate is approved, may be paid at such times and in such manner as are determined by the Minister. 1975, c. 1, s. 8, *amended*. Manner of
payment

14.—(1) Where the erection, purchase or other acquisition of a building by a municipality or by a society for the occupation in whole or in part by the society for use for a purpose other than to provide facilities and services to meet such special needs of children as are prescribed for the purposes of section 16 has been approved by the Minister, the Minister may, out of the moneys appropriated therefor by the Legislature, direct payment to the municipality or to the society of an amount, determined in accordance with the regulations, of the cost to the municipality or society of the building determined in accordance with the regulations. Capital
payments

(2) Where the Minister has approved the erection of a new building, an addition to an existing building, the purchase or other acquisition of an existing building, the structural alteration or the renovation or the furnishing and equipping of a building by a society for the provision of facilities and services to meet such special needs of children as are prescribed for the purposes of section 16, the Minister may direct payment to the society out of moneys appropriated therefor by the Legislature of an amount, determined in accordance with the regulations, towards the cost determined in accordance with the regulations of the new building, addition, acquisition, structural alteration, renovation or furnishing and equipping, as the case may be, that is applicable to the facilities and services. 1972, c. 109, s. 1, *amended*. Idem

15.—(1) The council of any municipality shall pass by-laws for the levying of such amounts as are necessary for the purpose of meeting any liability imposed on the municipality under this Act and may pass by-laws for the Power
to make
levies

purpose of affording to a society such other assistance as the council considers advisable.

When
society a
local board
R.S.O. 1970,
c. 324

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of *The Ontario Municipal Employees Retirement System Act* and not for any other purpose. R.S.O. 1970, c. 64, s. 15, *amended*.

Special
homes and
services

16. Where two or more societies have concurrent or contiguous jurisdictions they may with the approval of the Minister enter into an agreement establishing a joint committee for the purpose of providing facilities and services for the joint use of the societies to meet such special needs of children as are prescribed by the regulations, and sections 8 to 14 apply to the joint committee, for the purposes for which it was established, in the same manner as if the joint committee were a society. R.S.O. 1970, c. 64, s. 17, *amended*.

Temporary
board

17. Where, in the opinion of the Lieutenant Governor in Council, a society is not able to perform its duties, the Lieutenant Governor in Council may appoint a board of directors who shall be the board of directors of the society for such period as the Lieutenant Governor in Council considers advisable. R.S.O. 1970, c. 64, s. 18, *amended*.

Dissolution
of societies

18. The Lieutenant Governor in Council may, at any time upon the recommendation of the Minister, dissolve a society on such date as the order provides, and upon the dissolution of a society its property vests in the Crown to be held and disposed of in such manner as the Lieutenant Governor in Council determines. R.S.O. 1970, c. 64, s. 19, *amended*.

PART II

PROTECTION AND CARE OF CHILDREN

Interpre-
tation

19.—(1) In this Part and Part IV,

- (a) "child" means a person actually or apparently under sixteen years of age, and in the case of a person who is the subject of an order under subsection 1 of section 30, includes a person under eighteen years of age;
- (b) "child in need of protection" means,

- (i) a child who is brought, with the consent of the person in whose charge the child is, before a court to be dealt with under this Part,
- (ii) a child who is deserted by the person in whose charge the child is,
- (iii) a child where the person, in whose charge the child is, cannot for any reason care properly for the child, or where that person has died and there is no suitable person to care for the child,
- (iv) a child who is living in an unfit or improper place,
- (v) a child found associating with an unfit or improper person,
- (vi) a child found begging or receiving charity in a public place,
- (vii) a child where the person in whose charge the child is is unable to control the child,
- (viii) a child who without sufficient cause is habitually absent from home or school,
- (ix) a child where the person in whose charge the child is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for the child's health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or otherwise fails to protect the child adequately,
- (x) a child whose emotional or mental development is endangered because of emotional rejection or deprivation of affection by the person in whose charge the child is,
- (xi) a child whose life, health or morals may be endangered by the conduct of the person in whose charge the child is;

- (c) “developmental handicap” means a condition of mental impairment present or occurring during a person’s formative years that is associated with limitations in adaptive behaviour;
- (d) “foster home” means a home, other than the home of the child’s parent, in which a child is placed for care and supervision but not for the purposes of adoption;
- (e) “parent” includes,
 - (i) a guardian,
 - (ii) a person who has demonstrated a settled intention to treat a child as a child of the person’s family, and
 - (iii) a person who is not recognized in law to be a parent of a child but,
 - 1. has acknowledged a parental relationship to the child and has voluntarily provided for the child’s care and support,
 - 2. by an order of a court of competent jurisdiction or a written agreement, is under a legal duty to provide for the child or has been granted custody of or access to the child, or
 - 3. has made a written acknowledgment of the fact of his or her parentage to the society having or applying for the care or supervision of the child,

but does not include the Crown, a society or a foster parent of a child;

- (f) “place of safety” means a receiving home, foster home, hospital, and such other place or class of places designated in writing by a Director, but does not include a training school under *The Training Schools Act*;
- (g) “receiving home” means an institution or home operated or supervised by a society for the temporary care of children. R.S.O. 1970, c. 64, s. 20 (1); 1972, c. 109, s. 2; 1975, c. 1, s. 12 (1-4), *amended*.

R.S.O. 1970,
c. 467

By whom
cases are
to be
heard

(2) Subject to subsection 3 and subsection 3 of section 32, an application in respect of a child under this Part shall be heard by a court in the county or district in which the child

was taken into care. R.S.O. 1970, c. 64, s. 20 (2); 1975, c. 1, s. 12 (5), *amended*.

(3) Where,

Transfer of
proceedings

- (a) a child is taken into care, the court in the county or district in which the child is taken into care; or
- (b) a child is produced before the court under section 21 or 22, the court in the county or district in which the child is produced,

is satisfied that there is a preponderance of convenience in favour of holding the hearing in respect of the child in another county or district, the court may, at any time after an application is made in respect of the child under this Part and before hearing the application, transfer the proceedings to a court in any other county or district.

(4) For the purposes of an application under this Part, where the parent of a child is under eighteen years of age, the Official Guardian shall be the guardian *ad litem* of the parent with the duty of safeguarding the parent's interests before the court unless the court appoints any other person to be guardian *ad litem* for this purpose, and the court may make such order as to the costs of the guardian *ad litem* as the court considers just. R.S.O. 1970, c. 64, s. 20 (4); 1971, c. 98, s. 4, Sched., par. 6, *amended*.

20.—(1) A child may have legal representation at any stage in proceedings under this Part.

Legal
repre-
sentation
of child

(2) Where on an application under this Part a child does not have legal representation, the court shall as soon as practicable in the proceedings, determine whether legal representation is desirable to protect the interests of the child and if at that or any later stage in the proceedings the court determines that legal representation is desirable the court shall direct that legal representation be provided for the child.

Idem

(3) In determining whether legal representation is desirable to protect the interests of the child under subsection 2 where,

Idem

- (a) the court is of the opinion that there is a difference in the views of the child and,
 - (i) the views of the society, or
 - (ii) the views of a parent of the child,

and the society intends that the child be removed from the care of his or her parent or any other per-

son or remain in the care of the society pursuant to an order under paragraph 2 or 3 of subsection 1 of section 30, as the case may be;

- (b) the child is in the care of the society and a parent is not present at any stage of the proceedings;
- (c) the child is in the care of the society and is alleged to be a child upon whom abuse, as defined in subsection 1 of section 47, has been inflicted; or
- (d) an order under section 33 excluding the child from the hearing is made or is likely to be made,

the court shall direct that legal representation be provided for the child unless, having regard to the views and preferences of the child, where such views and preferences can reasonably be ascertained the court is satisfied that the interests of the child are otherwise adequately protected.
New.

How child
in need of
protection
brought
before
court

21.—(1) A police officer, a Director, a local director or a person authorized by a Director or the local director, who has reasonable and probable grounds to believe that any child is apparently in need of protection, may,

- (a) without warrant take the child to a place of safety and detain the child there until the matter can be brought before a court; or
- (b) apply to a court for an order requiring the person in whose charge the child is to produce the child before a court at the time and place named in the order. R.S.O. 1970, c. 64, s. 21; 1975, c. 1, s. 13 (1), *amended*.

Idem

(2) A police officer, a Director, a local director or a person authorized by a Director or by a local director, who has reasonable and probable grounds to believe that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society, may without warrant take the child to a place of safety and detain the child there. *New.*

Right of
entry

(3) Where a person authorized under subsection 1 or 2 has reasonable and probable grounds to believe that a child referred to in subsection 1 or 2 is on any premises, the person may without warrant enter the premises, if need be by force, and without warrant search for and remove the child from the premises.

1971, c. 47,
not to apply

(4) The provisions of *The Statutory Powers Procedure Act, 1971* do not apply to proceedings under this section. 1975, c. 1, s. 13 (2), *amended*.

22.—(1) Where it appears to a justice of the peace, on information laid before the justice on oath,

Warrant to search for child in need of protection

- (a) that there are reasonable and probable grounds to believe that a child is in need of protection; or
- (b) that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society,

the justice may issue a warrant authorizing a police officer, a Director, a local director or a person authorized by a Director or the local director to search for the child and to take the child to and detain the child in a place of safety. R.S.O. 1970, c. 64, s. 22 (1); 1972, c. 109, s. 3; 1975, c. 1, s. 14, *amended*.

(2) Where, upon application to a court by any person, the court is satisfied that there are reasonable and probable grounds to believe that a child is in need of protection and that the matter has been reported to a society and the local director of that society or person authorized by the local director has refused, or failed within a reasonable time, to apprehend the child or to apply to a court under section 21 or to apply for a warrant under subsection 1, the court may, after affording the society an opportunity to be heard,

Idem

- (a) make an order directing the local director of that society or person authorized by the local director, as the case may be, to search for the child and to take the child to and detain the child in a place of safety until the matter can be brought before a court; or
- (b) order a person in whose charge the child is to produce the child before a court at the time and place named in the order. *New*.

(3) A person authorized by a warrant issued under subsection 1 or an order made under clause *a* of subsection 2, may enter, if need be by force, any house, building or other place specified in the warrant or order and may search for and remove the child therefrom.

Right of entry

(4) It is not necessary in an information or warrant under subsection 1 or an application or order under clause *a* of subsection 2 to describe the child by name. R.S.O. 1970, c. 64, s. 22 (2, 3).

Name not necessary

23.—(1) In this section, “homemaker” means a person approved by the local director or a Director and who remains or is placed on a premises for the purpose of caring for a child. 1975, c. 1, s. 15, *part*.

Interpretation.

Homemaker
may remain
on premises

(2) Where it appears to a person entering a premises pursuant to section 21 or 22 that a child, who in the opinion of that person is unable to look after and care for himself or herself, has been temporarily left on the premises without proper or competent care or supervision and that a person having charge of the child is not available or is unable to consent to the placement of a homemaker on the premises, the person entering the premises, instead of taking the child to a place of safety, may,

- (a) remain on the premises; or
- (b) arrange with a society for the placement of a homemaker on the premises,

for the purpose of caring for the child and thereafter, subject to subsections 6, 7 and 8, the provisions of sections 27 to 36 apply with necessary modifications to the child. 1975, c. 1, s. 15, *part, amended*.

Idem

(3) A homemaker remaining or placed on a premises pursuant to subsection 2 may,

- (a) enter and live on the premises; and
- (b) carry on normal housekeeping activities on the premises,

in such manner and to such extent as is reasonably necessary to care for the child and may exercise reasonable control and discipline over the child.

Society or
Director may
provide goods
and services

(4) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society or a Director, as the case may be, may provide goods and services on the premises necessary to properly care for the child. 1975, c. 1, s. 15, *part*.

Protection
from
personal
liability

(5) A person who enters a premises pursuant to section 21 or 22 and who remains or is placed on a premises as a homemaker, pursuant to subsection 2 so long as the person is acting in good faith with reasonable care in the circumstances, is not liable for damages,

- (a) for entering the premises;
- (b) in connection with or arising out of the carrying on of normal housekeeping activities on the premises;
- (c) for providing goods and services necessary to care for any child on the premises; or

- (d) for exercising reasonable control and discipline over any child on the premises. 1975, c. 1, s. 15, *part, amended.*

(6) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society shall forthwith notify or make reasonable efforts to notify the parent or other person having charge of the child, immediately before the homemaker entered the premises, of the placement of the homemaker on the premises. Notice to parent

(7) Notwithstanding subsection 1 of section 30, where an application is made to a court under section 28, the court may order the homemaker to withdraw from the premises or may confirm the placement or entry of the homemaker on the premises for such period as the court considers necessary or until a parent or a person having custody of the child returns to care for the child but, subject to subsection 8, not to exceed thirty days. 1975, c. 1, s. 15, *part.* Order of court

(8) Where a parent or person having custody of the child has not returned before the end of the period set out in the order referred to in subsection 7, a court may, upon application therefor either before or after the expiration of the period of the order, extend the period for such further period of time as the court considers necessary or after a further hearing may make an order under subsection 1 of section 30. 1975, c. 1, s. 15, *part, amended.* Extension of period of order

24. Where a child is in the care of an institution or home and no parent can be located, an officer of the institution or home after making reasonable efforts to locate a parent shall notify the society having jurisdiction in the area where the institution or home is located and the officer may, upon giving notice to the society, apply to a court that may determine that the child, notwithstanding clause *b* of subsection 1 of section 19, is a child in need of protection, and the provisions of sections 28 to 36 apply with necessary modifications to the child. R.S.O. 1970, c. 64, s. 23, *amended.* Child in institution

25.—(1) Subject to the approval of the society, where a parent through circumstances of a temporary nature is unable to make adequate provision for his or her child, the parent may voluntarily place the child into the care and custody of a society with jurisdiction in the area where the parent resides and, where the society agrees to receive the child into care and custody, the society shall enter into a written agreement with the parent for such care and custody for a period, subject to subsection 2, of six months or less. Temporary care by agreement

Extension
of
agreement

(2) Where a Director approves, the parties to an agreement under subsection 1 may agree to extend the agreement for a further period or periods of time that together with the first period shall not exceed twelve months, and the parties may agree to vary any other term or condition of the agreement that is not prescribed by the regulations.

Limitation
on agreement

(3) Notwithstanding subsections 1 and 2, in no case shall an agreement under subsection 1 or any extension of the agreement be made that results in a child being in the care and custody of a society,

(a) as a ward of the society;

(b) pursuant to an agreement under this section; or

(c) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c* for a continuous period of more than twenty-four months.

Special
needs
agreement

(4) Subject to the approval of the society or the Minister, as the case may be, when a parent is unable to provide the services required by his or her child because of the special needs of the child, the parent may voluntarily place the child into the care and custody or under the supervision of a society with jurisdiction in the area where the parent resides or of the Crown, and where the society or the Minister, as the case may be, agrees to receive the child into care and custody or under supervision, the society or the Minister shall enter into a written agreement with the parent,

(a) for the placement of the child into the care and custody or under the supervision of the Crown or the society, as the case may be; or

(b) for the provision by the Minister or the society, as the case may be, of the services required to meet the special needs of the child,

or both, for such period or periods of time, subject to subsection 12, as may be agreed upon between the parties. 1975, c. 1, s. 15, *part*, *amended*.

Con-
siderations
before
entering
into an
agreement

(5) Before entering into an agreement under this section, the society or the Minister, as the case may be, shall consider what assistance to the child is possible while the child is in

the care of his or her parent or other person and before the society or the Minister assumes care and custody or supervision of the child under an agreement. *New.*

(6) No agreement with a parent under this section is invalid by reason only of the fact that the parent entering into it is under eighteen years of age. 1975, c. 1, s. 15, *part*. Agreement not invalid by reason of age

(7) The voluntary placement of a child with a society or the provision of services to a child by a society pursuant to an agreement with the society under subsection 4 shall not be made without the consent of a Director. Consent of Director

(8) Subject to subsection 9, no agreement under this section or extension thereof shall be entered into under this section in respect of a child twelve or more years of age without the written consent of the child and such consent, subject to subsection 13, shall not be withdrawn. Consent of child

(9) The consent required under subsection 8 is not required where the child is not capable of giving the consent because of a developmental handicap determined in accordance with the regulations. Idem

(10) No agreement under this section or any extension thereof shall extend beyond the eighteenth birthday of the person in respect of whom the agreement has been made. Age limit

(11) A person sixteen or more years of age and under eighteen years of age or the person's parent where the person is not capable of entering into an agreement because of a developmental handicap determined in accordance with the regulations, may, with the approval of a Director, enter into an agreement under this section with the Minister or a society with jurisdiction in the area where the person resides with respect to the provision of services to such person by the Minister or the society, as the case may be. *New.* Agreements with respect to persons over sixteen years of age

(12) Any party to an agreement made under this section at any time during the period of the agreement or any extension thereof, may terminate the agreement by giving at least twenty-one days notice in writing to the other party or parties, as the case may be, and the agreement shall terminate on the expiration of the period set out in the notice. 1975, c. 1, s. 15, *part, amended.* Termination of agreement

(13) A child who is twelve or more years of age and in respect of whom an agreement under this section was made, at any time during the period of the agreement or any Idem

extension thereof, upon giving notice in writing to the society or to the Minister, as the case may be, may seek a review of the agreement by the society or the Minister and where,

(a) the existing agreement is not confirmed; and

(b) no further agreement is reached,

by the parties and the child within twenty-one days from the giving of the notice, the agreement shall be deemed to be terminated. *New.*

Return
of the
child

(14) Where an agreement under this section or an extension thereof,

(a) is terminated under subsection 12, as soon as is practicable and within the time period set out in the notice given under that subsection;

(b) is the subject of a review under subsection 13, upon the expiration of the twenty-one day period referred to in that subsection; or

(c) expires pursuant to the terms of the agreement or pursuant to subsection 2, before or as soon as is practicable after the expiration thereof,

the society or the Minister, as the case may be, shall,

(d) cause the child to be returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, but where there is an outstanding order for custody of the child, cause the child to be placed with the person entitled to custody of the child under the order; or

(e) cause the matter to be brought before a court to determine whether the child is or would be, if left in the charge of or returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, as the case may be, a child in need of protection, and thereafter the provisions of sections 28 to 36 apply, with necessary modifications, to the child. 1975, c. 1, s. 15, *part, amended.*

Application

(15) Subsection 14 does not apply to an agreement entered into under subsection 11. *New.*

Prohibition
on
placement

26. No person shall place a child into the care or custody of a society and no society shall receive a child into its care or custody except,

- (a) where the child is detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22;
- (b) where the care of the child is assumed under section 23;
- (c) pursuant to an order under this Part or any other Act respecting the care or custody of the child;
- (d) pursuant to an agreement under subsection 1 or 4 of section 25;
- (e) pursuant to the authority given under subsection 2 or 3 of section 43; or
- (f) pursuant to a consent given under subsection 2 of section 69. *New.*

27.—(1) As soon as is practicable and within five days ^{Detention limited} of detaining a child in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, or of assuming the care of a child under section 23, as the case may be,

- (a) the matter shall be brought before a court to determine whether the child is a child in need of protection;
- (b) the child shall be returned to the parent or other person in whose charge the child was immediately prior to the child's apprehension or to the assumption of the child's care, as the case may be, but, where there is an outstanding order for custody of the child, the child shall be placed with the person entitled to custody of the child under the order; or
- (c) an agreement shall be entered into under section 25. 1975, c. 1, s. 16, *amended.*

(2) A child who has been detained pursuant to subsection 2 ^{Period of detention} of section 21 or clause *b* of subsection 1 of section 22 in an observation and detention home established or designated under *The Provincial Courts Act* that has been designated ^{R.S.O. 1970, c. 369} as a place of safety, shall, as soon as is practicable after the commencement of the detention, be brought before the court and the court shall make an order,

- (a) confirming the child's detention for a period or periods that shall not in total exceed thirty days; or

(b) discharging the child from the observation and detention home,

and upon completion of the period of detention or the discharge, as the case may be, the child shall be removed from the observation and detention home for transfer back into the care of the society. *New.*

Hearing
to be
held

28.—(1) Where a child who has been apprehended or produced before the court under section 21 or 22 is before the court, there shall be a hearing to determine whether or not the child is in need of protection, and before the court finds that the child is in need of protection, the court shall also determine the child's age, name, and, in the case of a child detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, the location where the child was taken into protection and, subject to section 44, the religious faith of the child. 1975, c. 1, s. 17 (1), *amended*.

Witnesses

(2) The court, or upon the request of any party to the proceedings, a judge or a justice of the peace, has the power of summoning any person and requiring that person to attend before the court to testify and to produce such records, writings, documents and things as may be requisite, and the court has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce records, writings, documents and things as is vested in any court in civil cases. R.S.O. 1970, c. 64, s. 25 (2); 1975, c. 1, s. 17 (2), *amended*.

Who may
be heard

(3) The court may hear any person with evidence relevant to the hearing including the child, a parent of the child, subject to subsection 9, a foster parent of the child, the local director of a society or any person appearing on behalf of any of them, any person authorized by the board of directors of the society on behalf of the society, the clerk of a municipality or any person authorized by the council of the municipality on behalf of the municipality, and a district director of the Ministry or any person authorized by the Minister on behalf of Ontario. R.S.O. 1970, c. 64, s. 25 (3); 1972, c. 1, s. 19 (3), *amended*.

Evidence
R.S.O. 1970,
c. 151

(4) Notwithstanding any privilege or protection afforded under *The Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report whether oral or written, including any transcript, exhibit or finding in a prior proceed-

ing whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.

(5) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. Affidavit evidence

(6) In determining the best interests of the child for the purposes of this Part, the court shall have regard to those considerations in subclauses i to viii of clause b of section 1 that are relevant in the circumstances. *New.* Determination of best interests of the child

(7) The court shall not proceed to hear or dispose of the matter until the court is satisfied that the parent or other person having actual custody of the child, including, where applicable, any foster parent who immediately prior to the hearing has been caring for the child on behalf of a society for a continuous period of more than six months and, subject to subsection 8, the child, has had reasonable notice of the hearing or that reasonable effort has been made in the opinion of the court to cause the parent, such other person or the child to be notified. 1975, c. 1, s. 17 (3), *amended.* Notice

(8) A child who is, Notice to child

(a) ten or more years of age is entitled to notice under subsection 7 unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsection 7 unless the court decides that the child is entitled to be present at the hearing under clause b of section 33.

(9) A foster parent who is given notice under subsection 7 is entitled to make representations to the court and to be represented by counsel at the hearing, but shall take no further part in the hearing without leave of the court. Foster parent at hearing

(10) The court's right to receive evidence in any hearing under this Part shall not be restricted by the content of any notice given or application made in writing with respect to the proceedings and the court may without requiring notice to be given, unless it considers further notice to be necessary in the circumstances, make an order at any stage in a proceedings amending such notice or application. *New.* Amendments

Court may
dispense
with notice

(11) Where, in the opinion of the court, prompt service of any notice required under subsection 7 of this section or subsection 6 of section 23 cannot be effected and any delay might endanger the health or safety of the child, the court may dispense with the requirements of those subsections. R.S.O. 1970, c. 64, s. 25 (7); 1975, c. 1, s. 17 (6), *amended*.

Limitation
where
notice
dispensed
with

(12) Where the requirements of subsection 7 have been dispensed with pursuant to subsection 11, the court shall not make an order committing the child as a ward of the Crown or make an order committing the child as a ward of a society for a period exceeding thirty days, except after holding a further hearing, and the requirements of subsection 7 apply to such further hearing. R.S.O. 1970, c. 64, s. 25 (8); 1975, c. 1, s. 17 (7), *amended*.

Custody
during
adjourn-
ment

(13) A court may from time to time adjourn a hearing but no such adjournment shall, subject to subsection 14 and subsection 1 of section 29, be for more than thirty clear days, and pending final disposition of the hearing,

- (a) where a society shows cause why the child should remain or should be placed, as the case may be, in the temporary care and custody of the society, the court shall order that the child remain or be placed in the temporary care and custody of the society; or
- (b) where sufficient cause has not been shown why the child should remain or be placed, as the case may be, in the temporary care and custody of a society, the court shall order that the child be returned to or remain in the care and custody of the parent or other person in whose charge the child was immediately prior to,
 - (i) the child's detention, or
 - (ii) the production of the child before the court by the parent or other person,

unless the court is satisfied that some other order for care and custody of the child should be made, in which case, the court may make such other order for the temporary care and custody of the child as the court considers advisable pending final disposition of the hearing, except an order placing the child in a training school established under *The Training Schools Act*, or placing the child in an observation and detention home established or designated

under *The Provincial Courts Act* that has not been designated under this Act as a place of safety. R.S.O. 1970, c. 64, s. 25 (10); 1973, c. 75, s. 1, *amended*.

(14) The court having regard to all the circumstances of the case and with the consent of the parties may adjourn a hearing under subsection 13 for a period longer than thirty days, and, where the court grants such longer period of adjournment, the order for adjournment shall contain the court's reasons for granting such longer period. Longer period of adjournment

(15) Where the court is satisfied that cause has been shown why a change in the arrangements for the care and custody of the child should be made, the court may vary or terminate any order for care and custody made under subsection 13. Variation or termination of order

(16) For the purpose of determining under subsection 13 or 15 whether a child shall remain or be placed in the temporary care and custody of a society, the court may receive and base its decision upon evidence that the court considers credible and trustworthy in the circumstances. *New*. Standard of proof

(17) The provisions of this section apply with necessary modifications to proceedings under subsections 1 and 4 of section 32, section 35, section 37 and subsections 1 and 2 of section 38. 1972, c. 109, s. 4 (2), *amended*. Application

29.—(1) Where a child has been found to be a child in need of protection pursuant to section 28, a court may order the child and any parent of the child or other person, except a foster parent caring for the child on behalf of a society, in whose charge the child has been or may be, to attend for an assessment before a person or persons specified in the order and who in the opinion of the court are qualified to perform medical, emotional, developmental, psychological, educational or social assessments and who have consented to perform the assessments and within a time specified therein, and the person or persons making the assessments shall report the results thereof in writing to the court within thirty days of the order or within such longer period of time as the court may direct. Order for assessment

(2) The court shall provide a copy of the report of the assessment to, Report

(a) subject to subsection 3, any person who is the subject of the assessment;

(b) counsel or the agent on the record for the child;

(c) a parent appearing at the hearing or the parent's counsel or agent on the record; and

(d) the society that is a party to the proceedings,

and the court shall at any time upon request order a copy of the report to be provided to a Director, and the court may at any time order a copy of the report to be provided to any other person for the purpose of the case as the court may direct.

Idem

(3) A child who is the subject of the assessment and who is,

(a) ten or more years of age shall be provided with a copy of the report unless the court is satisfied that the effect of the contents of all or any part of the report would be injurious to the emotional health of the child, in which case the court may withhold all or any part of the report from the child; or

(b) under ten years of age shall not be provided with a copy of the report pursuant to subsection 2, unless the court considers it reasonable in the circumstances that the child receive the report or any part thereof.

Idem

(4) The report of the assessment shall form part of the court record in the case but shall not be admissible in evidence for any purpose in any other proceedings except in proceedings,

(a) by way of appeal under section 43;

1972, c. 98

(b) under *The Coroners Act, 1972*; or

(c) referred to section 51,

without the consent of the person or persons who are the subject of the assessment.

Inference
from
refusal

(5) Where a person who has been ordered under subsection 1 to attend for an assessment refuses to attend or to undergo the assessment, the court may draw such inferences relating to the placement of the child as it thinks appropriate. *New.*

30.—(1) Where a court finds a child to be a child in need of protection pursuant to section 28, the court shall make the one of the following orders that the court considers to be in the best interests of the child, namely:

Order where
child in
need of
protection

1. That the child be placed with or returned to the child's parent or other person, subject to supervision by the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing, for a period of not less than six months and not more than twelve months as in the circumstances of the case the court considers advisable.
2. That the child be made a ward of and committed to the care and custody of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing, for such period, not exceeding twelve months, as in the circumstances of the case the court considers advisable.
3. That the child be made a ward of the Crown until the wardship is terminated under section 38 or expires under section 42 and that the child be committed to the care of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing. R.S.O. 1970, c. 64, s. 26; 1973, c. 75, s. 2, *amended*.

(2) Where a provincial judge has committed a child to the charge of a society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada), the child shall be deemed to be committed to the society under paragraph 2 of subsection 1,

Period of
committal

R.S.C. 1970,
c. J-3

- (a) where the order is for a fixed period that does not exceed twelve months, for the period specified in the order; or
- (b) where the order is for an indefinite period or exceeds twelve months, for twelve months.

(3) A provincial judge shall give reasonable notice to a society before committing a child to the charge of the society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada). 1975, c. 1, s. 18, *amended*.

Notice

(4) In making an order under paragraph 1 of subsection 1, the court may impose reasonable terms and conditions, relating to the method of supervision of the child,

Terms and
conditions

- (a) upon the person with whom the child has been placed or returned, as the case may be;
- (b) upon the supervising society;
- (c) upon the child; and
- (d) upon any other person where the person has been afforded an opportunity to be heard.

Determina-
tion of
order

(5) In determining which order to make under subsection 1, the court shall inquire of the parties whether any efforts have been made by a society or any other agency or person to assist the child while the child was in the care of his or her parent or other person and before the child came into the care of the society. *New.*

Payment
by parent

31.—(1) Subject to subsection 3, where a child is found to be a child in need of protection and,

- (a) is committed to the care of a society; or
- (b) is placed with a person other than the child's parent subject to supervision by a society,

the court may order a parent or the estate of a parent to pay the society such an amount and at such intervals as the court considers proper for each day the child is in the care or under the supervision, as the case may be, of the society.

Deter-
mination of
amount

(2) In determining the amount if any that shall be paid to the society under subsection 1, the court shall have regard to the following circumstances of the parent or the estate of the parent and of the child that the court considers relevant,

- (a) the assets and means of the child and of the parent or the estate of the parent;
- (b) the capacity of the child to provide for the child's own support;
- (c) the capacity of the parent or the estate of the parent to provide support;
- (d) the age and the physical and mental health of the child and of the parent;
- (e) the mental, emotional and physical needs of the child;

- (f) the legal obligation of the parent or the estate of the parent to provide support for any other person;
- (g) the child's aptitude for and reasonable prospects of obtaining an education;
- (h) any other legal right of the child to support other than out of public moneys.

(3) An order made under subsection 1 shall not extend beyond the date when the child attains the age of eighteen years. Idem

(4) A court may vary or rescind the order under subsection 1 where the circumstances of the child or the parent have changed. 1975, c. 1, s. 19 (1), *amended*. Varying payments by parent

(5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality on behalf of the society of the payments of the amounts required to be paid by the parent under subsection 1. R.S.O. 1970, c. 64, s. 27 (3). Agreement to collect payments

(6) An order made against a parent under subsection 1 may be enforced in the same manner as an order made under Part II of *The Family Law Reform Act, 1978*. R.S.O. 1970, c. 64, s. 27 (4), *amended*. Enforcement of order
1978, c. 2

32.—(1) Subject to subsections 6 and 7, where a child has been placed under the supervision of a society pursuant to an order made under paragraph 1 of subsection 1 of section 30, the society may at any time and shall, before the expiration of the period of supervision and upon giving notice to the child, the parent or any person having actual custody of the child, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify the variation or termination of any term or condition of the order relating to the method of supervision of the child or a further order under subsection 1 of section 30 and may, having regard to the best interests of the child, vary or terminate any term or condition in the order relating to the method of supervision of the child, terminate the order or make a further order under this Part. Application to review supervision order

(2) A society shall, as soon as is practicable, and within five days of removing a child from the parent or person with whom the child has been placed pursuant to an order under paragraph 1 of subsection 1 of section 30 apply to a court for a review of the child's status under subsection 1. Time limit for application

Jurisdiction
of court

(3) An application under subsection 1 or 4 may be heard by the court in the county or district in which the parent or other person with whom the child was placed pursuant to the order made under paragraph 1 of subsection 1 of section 30 resides at the time of the application.

Idem

(4) Where a child has been placed under the supervision of a society, pursuant to an order made under paragraph 1 of subsection 1 of section 30, a parent of the child, a person other than a parent with whom a child is placed or to whom a child is returned or the child where the child is twelve or more years of age may, after the expiration of six months from the making of the order or from the disposition of any previous application under this section for a review of the child's status, whichever is later, and upon giving notice to the society, apply to a court for a review of the child's status and,

- (a) where the court is satisfied that the termination of the order or the variation or termination of any term or condition of the order relating to the method of supervision of the child is in the best interests of the child, the court may terminate the order or vary or terminate such term or condition of the order; or
- (b) the court may make such further order under this Part as the court considers is in the best interests of the child. 1975, c. 1, s. 19 (2), *amended*.

Notice

(5) Subject to subsection 7, where a notice is given to the society under subsection 4,

- (a) by a parent of the child, the society shall forthwith upon receipt of the notice cause notice of the application to be given to the child, to any other parent of the child, and where applicable to the person other than a parent with whom the child is placed or to whom the child is returned;
- (b) by a person other than a parent, the society shall forthwith upon receipt of the notice cause notice of the application to be given to a parent of the child and the child; or
- (c) by the child, the society shall forthwith upon receipt of the notice cause notice of the application to be given to a parent of the child and where applicable to the person other than a parent with

whom the child is placed or to whom the child is returned. *New.*

(6) Notwithstanding paragraph 1 of subsection 1 of section 30, an application under subsection 1 may be made by the society having jurisdiction in the area where the parent or other person with whom the child was placed resided immediately prior to the application being made and, where the court makes an order, that society shall be given supervision or committal of the child, as the case may be. 1975, c. 1, s. 19 (2), *amended*. Jurisdiction of society

(7) A child who is,

Notice to child

- (a) ten or more years of age is entitled to notice under subsection 1, and where applicable under subsection 5, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1, and where applicable under subsection 5, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33. *New.*

33. The court shall, in every proceeding under this Part, make an order directing whether any child who is the subject of the proceedings shall be excluded from or be present at the hearing or any part thereof and in making an order under this section there shall be a presumption that, Presence of child at hearing

- (a) a child ten or more years of age is entitled to be present at any hearing that is part of the proceedings unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child; or
- (b) a child under ten years of age shall not be present at any hearing that is part of the proceedings unless the court is satisfied that the hearing or any part thereof would be understandable to the child and not be injurious to the emotional health of the child. *New.*

34. Notwithstanding section 129 of *The Judicature Act* and with the leave of the court hearing an application under this Part, any step may be taken in the application, the Proceedings at any time or on a holiday
R.S.O. 1970,
c. 228

hearing may be held and the order may be made and performed at any time of any day, including a holiday. R.S.O. 1970, c. 64, s. 28.

Access to
child

35.—(1) Subject to subsections 2, 3, 5 and 6 and subsection 7 of section 38,

- (a) a parent of a child where the child is in the care or custody of a society or with whom the child is placed or to whom the child is returned subject to supervision by a society, upon giving notice to the society;
- (b) a person other than a parent, with whom a child is placed or to whom a child is returned subject to supervision by a society, upon giving notice to the society;
- (c) a child twelve or more years of age and who is in the care and custody or under the supervision of a society, upon giving notice to the society;
- (d) a society having care and custody or supervision of a child upon giving notice to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to any parent of the child, to any person with whom the child is placed or to whom the child is returned subject to supervision of a society, as the case may be, and to the child,

may, at any time after the commencement of proceedings under this Part respecting the child and whether before or after the making of an order under this Part, apply to a court for an order regarding the right of access to the child.

Idem

(2) No order regarding the right of access to a person over the age of sixteen years shall be made under subsection 4.

Idem

(3) No application under subsection 1 shall be made by a person referred to in clause *a*, *b* or *c* of that subsection before the expiration of six months from the date of any previous application under that subsection by such person.
New.

Idem

(4) Upon an application therefor in accordance with subsection 1, or at the time of making any other order under this Part, a court, having regard to the best interests of the child shall consider whether or not an order regarding

the right of access to the child shall be made, altered, varied or discharged and may make such order as the court considers proper regarding the right of access to the child by any person or may alter, vary or discharge, any order so made. R.S.O. 1970, c. 64, s. 29, *amended*.

(5) A child who is,

Notice
may be
dispensed
with

- (a) ten or more years of age is entitled to notice under subsection 1 and where applicable under subsection 6, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1 and where applicable under subsection 6, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33.

(6) Subject to subsection 5, where a notice is given to the society under, Notice

- (a) clause *a* of subsection 1, the society shall forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to the child and to any other parent of the child; or
- (b) clause *b* of subsection 1, the society shall forthwith upon receipt of the notice cause notice of the application to be given to the parent of the child and to the child; or
- (c) clause *c* of subsection 1, the society shall forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to a parent of the child or to any other person with whom the child is placed or to whom the child is returned subject to supervision by a society, as the case may be. *New*.

36. The reasons for any decision made by a court under this Part may be oral or written and shall include, Contents
of
decision

- (a) a statement of the evidence upon which the decision of the court is based;
- (b) in the case of a decision granting or renewing an order under paragraph 1 of subsection 1 of section 30 or varying any term or condition of the order, a statement of any terms and conditions imposed by the court;
- (c) in the case of a decision granting or refusing,
 - (i) an order under paragraph 1, 2 or 3 of subsection 1 of section 30,
 - (ii) an order for the renewal or termination of any existing order under paragraph 1 or 2 of subsection 1 of section 30 or for the termination of any existing order under paragraph 3 of subsection 1 of section 30, or
 - (iii) an order varying any term or condition of any existing order under paragraph 1 of subsection 1 of section 30,

a statement of the plan proposed by a society or of a plan, if any, proposed by a parent of the child to meet the best interests of the child, but nothing in this section shall require the court to identify in the statement any person caring for the child during the period of any proposed placement or identify any place where the care is to be provided; and

- (d) a statement of the reasons for the decision, and, in the case of an order authorizing the removal of a child from or refusing to return the child to the parent or person in whose charge the child was immediately prior to the child's apprehension by a society, the statement shall include reasons why the child cannot be adequately protected without such removal or without the refusal of such return, as the case may be. R.S.O. 1970, c. 64, s. 30, *amended*.

Application
to review
society
wardship

37.—(1) Subject to subsection 4, where a child has been committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 30, the society may at any time and shall, before the expiration of the period of wardship, other than under section 42, and upon

giving notice to the child, the parent of the child and any foster parent who immediately prior to the application has been caring for the child on behalf of the society for a continuous period of more than six months, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify a further order under subsection 1 of section 30 and may, having regard to the best interests of the child, terminate the order or make a further order under this Part but in no case shall an order be made that results in the child being in the care and custody of a society,

- (a) as a ward of the society;
- (b) pursuant to an agreement under section 25; or
- (c) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c*, for a continuous period of more than twenty-four months. R.S.O. 1970, c. 64, s. 31; 1973, c. 75, s. 4, *amended*.

(2) Subject to subsections 4 and 5, where a child has been ^{Idem} committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 30,

- (a) a parent of the child after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to the society having the care of the child,

may apply to a court for a review of the child's status and,

- (c) where the court is satisfied that the termination is in the best interests of the child, the court may terminate the order; or
- (d) the court may make such further order under this Part as the court considers necessary in the

best interests of the child, but in no case shall an order be made that results in the child being in the care and custody of a society,

- (i) as a ward of the society,
- (ii) pursuant to an agreement under subsection 1 of section 25, or
- (iii) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in subclauses i, ii and iii, for a continuous period of more than twenty-four months. 1975, c. 1, s. 20, *amended*.

Extension
of limitation
period

(3) Notwithstanding subsections 1 and 2, where, on an application under subsection 1 or 2 for a review of the child's status, the hearing is adjourned to a date beyond the twenty-four month period prescribed in those subsections, the order to be reviewed shall not expire at the end of such period but shall be extended until an order pursuant to subsection 1 or 2 has been made. *New*.

Notice may
be
dispensed
with

(4) A child who is,

- (a) ten or more years of age is entitled to notice under subsection 1 and where applicable under subsection 5, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1 and where applicable under subsection 5, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33. *New*.

Notice

(5) Subject to subsection 4, where a notice is given to the society under,

- (a) clause *a* of subsection 2, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to the child and to any other parent of the child; or

- (b) clause *b* of subsection 2, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to a parent of the child and to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months.

(6) Notwithstanding subsections 13 and 15 of section 28, ^{Custody of child} where an application is made under this section for a review of the child's status, the child shall remain in the care and custody of the society having care and custody of the child at the time the application was made pending final disposition of the application by the court unless cause is shown why a change in the arrangements for the care and custody of the child should be made. *New.*

38.—(1) Subject to subsections 3, 4, 5 and 6, where a child ^{Application to review Crown wardship} has been committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 30,

- (a) a parent of the child after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to a Director and the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to the society having the care of the child,

may apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 7, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 30, that the court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 35. *New.*

(2) Subject to subsections 3, 4 and 5, where a child has been ^{Idem} committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 30, the society having the care of the child upon giving notice to a

Director, any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, any parent of the child and the child, may, at any time during the period of the Crown wardship, apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 7, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 30, that the court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 35.

Notice not
required

(3) A notice is not required to be given under subsections 1 and 2 to a parent of the child where the child has attained the age of sixteen years. 1975, c. 1, s. 21, *amended*.

Notice may
be dispensed
with

(4) A child who is,

(a) ten or more years of age is entitled to notice under subsections 1 and 2 and where applicable under subsection 6, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsections 1 and 2 and where applicable under subsection 6, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33. *New*.

Termination
of access

(5) Before making an order under subsection 1 or 2 terminating an order for access to the child made pursuant to section 35, the court shall consider whether the benefit to the child of any plan proposed for the child, including plans for seeking an adoption placement for the child, outweighs the benefit to the child of maintaining the access rights.

Notice

(6) Subject to subsection 4, where a notice is given to the society under,

(a) clause *a* of subsection 1, the society shall, forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more

than six months, to the child and to any other parent of the child; or

- (b) clause *b* of subsection 1, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to a Director, to a parent of the child and to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months.
New.

(7) Subject to sections 39 and 42, where a child has been committed as a ward of the Crown, the order made under paragraph 3 of subsection 1 of section 30 shall remain in effect and the Crown wardship shall, subject to an adoption order being made with respect to the child under Part III, not be terminated by, reviewed in or otherwise brought before the court and an order of access to the child shall not be made or applied for where the child has been placed for the purpose of adoption in the home of a person who has been approved by a society or by a Director as a suitable person to adopt the child and while the child is residing in that person's home.

(8) The placement for the purpose of adoption of the child referred to in subsection 7 shall not be made until any appeal under section 43, from,

- (a) the decision granting an order of Crown wardship;
or
(b) any decision granting or refusing an order under subsection 1 or 2,

has finally been disposed of, or until,

- (c) the period of time for commencing an appeal under section 43 from a decision referred to under clause *a* or *b* has expired; or
(d) any outstanding order of access to the child under this Act has been terminated,

whichever is the later. R.S.O. 1970, c. 64, s. 32 (2, 3),
amended.

(9) Notwithstanding subsections 13 and 15 of section 28, where an application is made under this section for a review of the child's status, the child shall remain in the care and custody of the society having care and custody of the child at the time the application was made pending final disposition of the application by the court unless cause is

shown why a change in the arrangements for the care and custody of the child should be made. *New.*

Review
by
Director

39. A Director or any person authorized by the Director shall, during each calendar year beginning in the year 1979, review the status of each child who during that calendar year and, in the absence of any further order by the court has been or will continue to be a Crown ward for a continuous period of twenty-four months from the date of the order of Crown wardship or from the last review under this subsection, whichever is later, and the Director may after any such review direct the society having care of the child to make an application pursuant to subsection 2 of section 38 to a court for a review of the child's status. *New.*

Duties re
Crown wards

40.—(1) The Crown has and shall assume all the rights and responsibilities of a legal guardian of each child who is made a ward of the Crown for the purpose of the child's care, custody and control, and the powers, duties and obligations of the Crown in respect of the child other than the powers, duties and obligations assigned to a Director by this Act shall be exercised and discharged by the society having the care of the child.

Transfer of
Crown ward

(2) A Director may direct that a Crown ward be transferred to the care of any other society or institution designated by the Director. R.S.O. 1970, c. 64, s. 33, *amended.*

Society
to be
legal
guardian

41. Each society has and shall assume all the rights and responsibilities of a legal guardian of every child who is committed as a ward of the society for the purpose of their care, custody and control. R.S.O. 1970, c. 64, s. 34, *amended.*

Expiration
of
wardship


42. Every order under this Part shall be deemed to expire with the marriage of the child who is the subject of the order or when the child attains the age of eighteen years, but where a wardship expires as a result of a Crown ward attaining the age of eighteen years, a society may, with the approval of a Director, continue to provide care and maintenance for the former Crown ward if the former Crown ward,

(a) is enrolled as a full-time student at an educational institution; or


(b) is mentally or physically incapacitated,

for any period of time after the expiration of the wardship that does not extend beyond the date when the former Crown ward attains the age of twenty-one years. 1972, c. 109, s. 5 (1), *amended.*

43.—(1) A decision granting or refusing an order of a court under this Part except a decision made under subsection 1 of section 29 in respect of a child may be appealed to the county or district court of the county or district in which the decision was made by, Appeal to
county
court

 (a) a parent or other person in whose charge the child may have been at the time of the child's apprehension;

(b) a Director or local director; or

(c) a next friend on behalf of the child. 1975, c. 1, s. 22, *amended*. 

(2) Execution of the decision being appealed shall be stayed for ten days next following the service of the notice of appeal upon the court that made the decision being appealed, and, where the child is in the custody of the society at the time the decision being appealed is made, the child shall remain in the care and custody of the society, Decision
stayed

(a) during the ten days that execution of the decision is stayed; or

(b) until the county or district court of the county or district in which the decision was made makes an order for temporary care and custody of the child pursuant to subsection 4,

whichever is earlier.

(3) Notwithstanding subsection 2, where the decision being appealed authorizes the child to remain in the care and custody of the society, the child shall, subject to subsection 4, remain in the care and custody of the society after the period of ten days referred to in subsection 2, pending final disposition of the appeal. *New.* Child to
remain with
society

(4) Where the county or district court of the county or district in which the decision being appealed was made is satisfied that an order for care and custody of the child is in the best interests of the child, the county or district court may make such order for the temporary care and custody of the child that the county or district court considers advisable pending final disposition of any appeal made under this section, except an order placing the child in a training school established under *The Training Schools Act* or placing the child in an observation and detention home established or designated under *The Provincial Courts Act* that has not been designated under this Act as a place of safety, and the county or district court may, upon application by any party before the final disposition of the appeal and where the county or district court is satisfied that it is in the best interests of the Temporary
order of
court

child, vary or terminate the order or make a further such order.

Period of
temporary
wardship

(5) Where, pursuant to the final disposition of the appeal, the child is committed as a ward of the society, any period of temporary care and custody ordered under subsection 4 shall be included in determining the twenty-four month period prescribed in subsection 1 or 2 of section 37.

Extension
of
limitation
period

(6) Notwithstanding subsection 5 and subsections 1 and 2 of section 37, where on an appeal under this section from a decision granting an order under paragraph 2 of subsection 1 of section 30 or an order for the renewal or termination of an order under that paragraph, the final disposition of the appeal extends beyond the twenty-four month period prescribed in subsection 1 or 2 of section 37, the order being appealed shall not expire at the end of such period but shall be extended until a final disposition is made of the appeal.

Extension of
time for
appeal

(7) No extension of the time for the commencement of the appeal shall be granted after the child has been placed for adoption. *New.*

New
evidence

(8) On the hearing of the appeal and with leave of the county or district court hearing the appeal, further evidence relating to matters both preceding and subsequent to the making of the decision being appealed, may be received either by affidavit, oral examination or as may be directed by the county or district court. 1975, c. 1, s. 22, *amended.*

Pre-
sumption
as to
religious
faith

44.—(1) Subject to subsection 2, for the purposes of this section, a child shall be deemed to have the same religious faith as the child's father unless it is shown that an agreement has been entered into in writing, signed by the child's parents, that the child be brought up in the same religious faith as the child's mother.

Child
born
outside
marriage

(2) For the purposes of this section, a child born outside marriage shall be deemed to have the religious faith of the child's mother.

Where
established
faith not
that of
parent

(3) Where a child is being raised in a religious faith other than the child's religious faith as determined under subsection 1 or 2 or where the child's religious faith cannot be readily determined under subsection 1 or 2, the court may determine the child to have such religious faith, if any, for the purposes of this section, as the court considers proper in the circumstances.

Religious
faith of
child

(4) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a

Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of the child's own religious faith, if any.

(5) Subsection 4 does not apply to the commitment of a child to the care of a society in a municipality in which there is only one society. Where only one society

(6) Where a society,

Application to waive subs. 4

(a) is unable to place a child in a suitable foster home within a reasonable time because of the operation of subsections 1 to 4; and

(b) would be able to place the child in a suitable foster home but for the operation of subsections 1 to 4,

the society or a Director may apply to the court who may order that subsection 4 does not apply to the child in respect of the placement.

(7) Notwithstanding anything in this section, the court may have regard to the wishes of the child in determining what order ought to be made as to the child's religious faith. Child's wishes to be consulted
R.S.O. 1970, c. 64, s. 37, *amended*.

45.—(1) A child who is a ward of the Crown or of a society may be placed by the society for any period of time in a foster home or other suitable place according to the needs of the child and the society shall ensure that the child so placed receives an education in accordance with the laws of Ontario and in keeping with the child's intellectual capacity and that provision is made for the child's occupational training and total development such as a good parent would provide for his or her own child. Society may place ward

(2) A child who is a ward of the Crown or of a society and who has been placed in a foster home or other suitable place may at any time be removed by the society when, in the opinion of a Director or the local director, the welfare of the child so requires. Removal of ward of society

(3) Where a child who is a ward of the Crown is placed in a foster home and, in the opinion of the local director with the approval of a Director, it is in the best interests of the child to place the child for adoption, the foster parents shall not be denied the opportunity of making application to adopt the child if they so desire. R.S.O. 1970, c. 64, s. 38, *amended*. Adoption of ward

Inter-
ference
with wards,
etc.

46. No person shall,

- (a) induce or attempt to induce a child to leave the care of a person or persons with whom the child is lawfully placed; or
- (b) detain or harbour a child who is lawfully in the care of a person or persons, after a demand is made by a person authorized to require the child to be delivered up; or
- (c) subject to section 35, visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or otherwise interfere with a child who is in the lawful care or custody of a society; or
- (d) subject to section 35, visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a foster parent of a child where the child is in the lawful care or custody of a society,

without the consent in writing of the society having the care, custody or supervision of the child. R.S.O. 1970, c. 64, s. 39, *amended*.

Interpre-
tation

47.—(1) For the purposes of this section and sections 49, 50, 51 and 52, “abuse” means a condition of,

- (a) physical harm;
- (b) malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death; or
- (c) sexual molestation. *New.*

Desertion,
abuse, etc.,
of child

(2) No person having the care, custody, control or charge of a child shall abandon or desert the child or inflict abuse upon the child or permit the child to suffer abuse.

Further
proceedings
as to child

(3) A court may, in connection with any case arising under subsection 2, hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. R.S.O. 1970, c. 64, s. 40, *amended*.

Leaving
child

48.—(1) No person having the care, custody, control or charge of a child shall leave the child without making reasonable provision, in the circumstances, for the supervision, care or safety of the child.

(2) A court may in connection with any case arising under subsection 1 hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. R.S.O. 1970, c. 64, s. 40, *amended*. Further proceedings as to child

(3) Where a person is charged with contravening subsection 1, the onus of establishing that reasonable provision was made in the circumstances for the supervision, care or safety of the child where the child is under the age of ten years, rests with the person charged. *New*. Onus

49.—(1) Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society. R.S.O. 1970, c. 64, s. 41 (1), *amended*. Reporting abuse of child

(2) Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has or has had charge of the child shall forthwith report the suspected abuse to a society. *New*. Duty of professional to report

(3) This section applies notwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection 1 or 2 unless the giving of the information is done maliciously or without reasonable grounds to suspect that the information is true. R.S.O. 1970, c. 64, s. 41 (2), *amended*. Privilege abolished

(4) Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client. *New*. Solicitor and client privilege

50.—(1) Subject to the provisions of subsection 4 with respect to section 26a of *The Mental Health Act* and notwithstanding the provisions of any other Act, where the applicant satisfies the court, Access to records, etc.
R.S.O. 1970, c. 269

(a) that there are reasonable and probable grounds to believe that there are records, writings or documents at any place that are relevant to an investigation to determine whether abuse has been or is likely to be inflicted on a child; and

(b) that a request by a Director, a local director of a society or a person authorized by the Director or by the local director to inspect such records,

writings or documents has been refused by the custodian of the records, writings or documents,

the court upon application by the Director or the society, as the case may be, and upon notice of the application being given to the custodian of the records, writings or documents, may, subject to subsection 2, make an order for the production by the custodian thereof of any of the records, writings or documents or any part or parts thereof that the court considers are relevant to an investigation to determine whether the abuse has been or is likely to be inflicted on the child, to the Director or the local director or person authorized by the Director or the local director, as the case may be, and the Director, local director or the person may inspect and extract information from such records, writings or documents or part or parts thereof that are designated in the order and reproduce such copies therefrom as the Director, local director or the person, as the case may be, considers necessary.

Non-disclosure of records, etc.

(2) The records, writings or documents or any part or parts thereof that are produced or disclosed to the court in the course of a hearing held to determine whether an order should be made under subsection 1 for the production of the records, writings or documents or any part or parts thereof, shall not be disclosed to any person except pursuant to and in accordance with any order made following the hearing under subsection 1.

Idem

(3) No person who obtains information pursuant to an order made under subsection 1 shall disclose or transmit or permit the disclosure or transmission of the information except for the purpose of the investigation to determine whether the child is in need of protection or for giving evidence in proceedings under this Part.

Matters to be considered by court
R.S.O. 1970, c. 269

(4) In determining whether to make an order under subsection 1 for the production of a clinical record within the meaning of section 26a of *The Mental Health Act*, the court shall give equal consideration to the matters to be considered under subsection 7 of section 26a of that Act and the health and safety of the child. *New.*

Action for recovery on behalf of child

51. Where the Official Guardian, or in the case of a child in the care of a society under paragraph 2 or 3 of subsection 1 of section 30, the society, is of the opinion that a child has a cause of action against a person or persons or other right of recovery by reason of the infliction of abuse upon the child and that the institution of proceedings to recover damages or other compensation would be in the best interests of the

child, the Official Guardian or the society, as the case may be, may institute and conduct such proceedings on behalf of the child in respect of the abuse suffered by the child.

52.—(1) In this section,

Interpre-
tation

- (a) “Director” means an employee of the Ministry appointed by the Minister for the purposes of this section;
- (b) “registered person” means a person named in or otherwise identifiable from the register established under subsection 3, but does not include the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 who are not themselves the subject of the report.

(2) Every society that receives information under section 49 concerning the abuse of a child, including a child in the care of a society, shall forthwith, after the information is verified in the manner determined by the Director, report the information to the Director in the prescribed form, and no action or other proceeding for damages shall be instituted against any officer or employee of a society for any act done in good faith in the execution or intended execution of any duty imposed on the society under this subsection or for any alleged neglect or default in good faith of such duty.

Society
to report
information
concerning
abuse

(3) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information received by societies under section 49 concerning the abuse of children, but the register shall not contain any information that has the effect of identifying the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 unless such person or persons are themselves the subject of the report.

Register

(4) Subject to subsections 5 to 10 and notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the register established under subsection 3.

Information
confidential

(5) A coroner, a legally qualified medical practitioner or police officer authorized in writing and directed by a coroner for the purposes of an investigation or inquest under *The Coroners Act, 1972* and the Official Guardian or a person duly authorized as the agent of the Official Guardian may inspect or remove the information maintained in the register established under subsection 3 and may disclose or transmit

Exceptions

1972, c. 98

that information only in accordance with the authority vested in the person and in the case of the Official Guardian or his duly authorized agent only for the purposes of section 51.

Idem

(6) The Director and the following persons with the approval of the Director, and subject to such terms and conditions as the Director may impose, may inspect or remove or permit the inspection or removal of the information maintained in the register and may disclose or transmit or permit the disclosure or transmission of that information to any person referred to in subsection 5 or to any other person referred to in this subsection:

1. A person who is on the staff of,
 - i. the Ministry,
 - ii. a society, or
 - iii. a child protection agency recognized by a jurisdiction outside Ontario.
2. A person who is or may be providing services or treatment to a registered person.

Idem

(7) A person who has the written approval of the Director and who is engaged in *bona fide* research may inspect the information referred to in subsection 4 but shall not use or communicate the information for a purpose other than research, academic pursuits or the compilation of statistical data and shall not communicate any information that has the effect of identifying any person named in the register.

Idem

(8) A registered person or the registered person's agent may inspect the information maintained in the register, but shall not inspect information that refers to persons other than the registered person.

Idem

(9) A legally qualified medical practitioner who is approved by the Director may inspect information referred to in subsection 4 that is approved by the Director.

Idem

(10) The Director or a person approved by the Director who is on the staff of the Ministry may expunge a name from the register or otherwise amend the register pursuant to a decision of the Director or as prescribed by the regulations.

Register
inadmissible

(11) The register established under subsection 3 is inadmissible in evidence for any purpose in any proceedings, except,

- (a) to prove compliance or non-compliance with any of the provisions of this section;
- (b) in an appeal made under subsection 19;
- (c) in proceedings under *The Coroners Act, 1972*; or 1972, c. 98
- (d) in proceedings referred to in section 51.

(12) Where an entry is made in the register, the Director ^{Notice} shall forthwith cause notice to be given in writing to each registered person included in the entry who is alleged or suspected to have inflicted abuse upon a child,

- (a) that the person's name has been recorded in the register or that the person is otherwise identifiable from the register;
- (b) that the person or the person's agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) that the person is entitled to request the Director to expunge the person's name from the register or to have the register otherwise amended.

(13) A person to whom a notice is given under subsection 12 may request the Director to expunge from the register the registered person's name referred to in the notice or to otherwise amend the register. ^{Request for a hearing}

(14) Where the Director receives a request under subsection 13, the Director shall hold a hearing before deciding to refuse the request to expunge the registered person's name from the register or to refuse the request to otherwise amend the register, and the provisions of *The Statutory Powers Procedure Act, 1971* apply, with necessary modifications, to the hearing. ^{Hearing} 1971, c. 47

(15) A registered person to whom notice is given under subsection 12, the society that received the information concerning the registered person under subsection 1 or 2 of section 49 and such other persons as the Director may specify are parties to the hearing. ^{Parties}

(16) The Director shall cause notice of the hearing to be given to the parties to the hearing at least ten days before the hearing is held. ^{Notice}

(17) Where the Director, after holding a hearing, determines that the information in the register with respect to a ^{Decision of Director}

registered person should not be in the register or that the information is in error, the Director shall, subject to subsections 19 and 20, cause the registered person's name to be expunged from the register or otherwise cause the register to be amended, as the case may be, and the Director may order that a society's records be amended to reflect the Director's decision.

Delegation of
authority
to hold a
hearing

(18) The Director may authorize any other person to hold a hearing required under subsection 14 and where such person is authorized by the Director to hold the hearing, the person shall exercise the powers and duties of the Director under subsections 14 to 17.

Appeal

(19) Any person who is a party to the hearing may appeal the decision made pursuant to subsection 17 to the Divisional Court.

Decision of
Divisional
Court

(20) The Divisional Court may affirm the decision appealed from or may rescind the decision and refer the matter back to the Director or the person authorized by the Director under subsection 18, as the case may be, to be disposed of in accordance with such directions as the Divisional Court considers proper under this section, and the Director or the person authorized by the Director shall give effect to any direction given by the Divisional Court under this subsection.

Record of
proceedings
at hearing
inadmissible

(21) The record of proceedings in any hearing held under subsection 14 or in any appeal under subsections 19 and 20 is inadmissible in evidence in any other proceeding for any purpose except proceedings under clause *c* and subclause *iv* of clause *f* of subsection 1 of section 94. *New.*

Causing
child
to beg,
perform,
etc.

53.—(1) No person shall,

- (a) cause or procure a child to be in any place to which the public has access for the purpose of begging or receiving charity or of inducing the giving of charity whether under the pretence of singing, playing, performing, offering anything for sale or otherwise; or
- (b) subject to subsection 2, cause or procure a child to be in any place to which the public has access for the purpose of singing, playing or performing for profit or offering anything for sale between 9 o'clock in the afternoon of any day and 6 o'clock in the morning of the following day; or
- (c) subject to subsection 2, cause or procure a child to be at any time for the purpose of singing, play-

ing or performing for profit or offering anything for sale in any circus, theatre or other place of public entertainment to which the public is admitted by payment.

(2) In the case of an entertainment or series of entertainments to take place in premises used for public entertainment or in a circus, theatre or other place of public amusement, where it is shown that provision has been made to ensure the health and proper treatment of a child proposed to be employed thereat, the head of the council of the municipality where the entertainment is to take place may, with the approval of a society having jurisdiction where the entertainment is to take place, grant a licence for such time and during such hours of the day and subject to such restrictions and conditions as the head of the council thinks fit for any child who in the opinion of the head of the council is a fit and proper person to take part in such entertainment or series of entertainments, and the licence may at any time be varied, added to or revoked by the head of the council with the approval of the society.

Licence for
child to
perform in
public

(3) The head of the council may assign to the chief of police of the municipality or to some other person the duty of ensuring that the restrictions and conditions of any licence granted under subsection 2 are duly complied with, and the chief of police or such person, as the case may be, may enter, inspect and examine any place at which the employment of a child is for the time being licensed. R.S.O. 1970, c. 64, s. 42, *amended*.

Officer to
supervise
licence

54.—(1) Subject to subsection 2 of section 53, no person under sixteen years of age shall engage in any trade or occupation in a place to which the public has access between the hours of 9 o'clock in the afternoon and 6 o'clock in the morning of the following day.

Person under
sixteen in
public place

(2) No person under sixteen years of age shall loiter in any place to which the public has access between the hours of 10 o'clock in the afternoon and 6 o'clock in the morning of the following day or be in any place of public resort or entertainment during such hours unless accompanied by the person's parent or an adult appointed by the parent or in the case of a child in the lawful care or custody of a society, an adult appointed by the society to accompany that person.

Person
under
sixteen
loitering
in public
place
at night

(3) A person found contravening any provision of this section may be warned by a police officer, and, if the warning is not regarded or if, after the warning, the person is again found con-

Warning

travening any provision of this section, the person may be taken by the police officer to the person's home or to a place of safety and where the person is taken to a place of safety, the person shall be brought before a court as if the person had been apprehended pursuant to section 21 or 22. R.S.O. 1970, c. 64, s. 43 (2-5), *amended*.

Presumption
as to
age of
child

55. Where a person is charged with an offence under this Part in respect of a child who is alleged to be under a specified age and the child appears to the court to be under that age, the child shall for the purposes of this Part be deemed to be under that age unless the contrary is proved. R.S.O. 1970, c. 64, s. 44.

Separate
place of
detention

56.—(1) A child who is charged with an offence or brought before a court under this Part shall not, before the child's trial or hearing, be confined in a place used for persons charged with crime. R.S.O. 1970, c. 64, s. 45 (1), *amended*.

Idem

(2) Provision shall be made for the separate detention of every such child prior to the child's trial or hearing by arrangement with a person or society willing to undertake the responsibility of such detention on such terms as are agreed upon, or by providing suitable premises entirely distinct and separated from the ordinary lock-up or correctional institution. R.S.O. 1970, c. 64, s. 45 (2); 1975, c. 1, s. 24, *amended*.

Idem

(3) A child lawfully in custody shall not be placed or allowed to remain in the company of adult prisoners. R.S.O. 1970, c. 64, s. 4 (3).

Place of
hearing

57.—(1) Where a hearing is held under this Part, except a hearing under section 52, whether upon an application or by way of trial or appeal, the hearing shall be held in premises maintained specifically for the purpose or in the private office of the judicial officer holding the hearing or in other suitable premises, but the hearing shall not be held in premises ordinarily used for hearings in criminal proceedings.

Exclusion
of
persons
from
hearing

(2) Where a hearing is held under this Part, whether upon an application or by way of trial or appeal, all persons shall be excluded from the hearing unless the judicial officer holding the hearing having regard to,

(a) the wishes and interests of the parties; and

(b) whether or not the presence of others at the hearing would be injurious to the emotional health of any child who is present at the hearing,

otherwise directs.

(3) Notwithstanding subsection 2,

Idem

- (a) a person acting as prosecutor in the proceedings and an agent of the Attorney General and of a Director; and
- (b) subject to section 33, a child who is a party to the proceedings, the child's parents, a representative of a society, a person acting on behalf of the child, a person acting on behalf of the society, a person acting on behalf of the child's parents and any other person entitled to notice of the hearing,

may be present at a hearing held under this Part.

(4) Notwithstanding subsection 2 and subject to subsection 5, representatives of the press, radio and television media not exceeding two in number as agreed upon by all such representatives who present themselves, may be present at a hearing under this Part, except a hearing under section 52, but the judicial officer holding the hearing may exclude any or all such representatives from all or any part of the hearing or may prohibit the reporting of all or any part of the case by such representatives who are present at the hearing where the judicial officer is of the opinion that the presence of the representative or representatives, as the case may be, at the hearing or the reporting would be injurious to the emotional health of any child before the court and the judicial officer shall give reasons for the exclusion. *Idem*

(5) Where the representatives referred to in subsection 4 who are entitled to be present at the hearing are unable to agree as to who shall be present at the hearing, the judicial officer holding the hearing may designate those representatives who are entitled to be present. *Idem*

(6) The presence at the hearing of more than two representatives of the press, radio or television media may be allowed by the judicial officer holding the hearing. *Idem*

(7) Where a hearing is held under this Part, whether upon an application or by way of a trial or appeal, no person shall publish or make public in respect of the proceedings any information that has the effect of identifying, *Publication*

- (a) any child or a parent or foster parent of the child or a member of the child's family present at the proceedings whether as a party, witness or otherwise; and

- (b) any person charged with an offence in the proceedings. R.S.O. 1970, c. 64, s. 46, *amended*.

Effect of
order of
court in
other
jurisdiction

58. Where, an order or orders are made by a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof that is prescribed in the regulations and such order or orders do not effect an adoption of the child according to the law of the jurisdiction where the order or orders were made, but the rights and responsibilities of guardianship in respect of a child have been legally vested by such order or orders in any person, organization, province, state or country or a legal representative of any of them, the order or orders so made shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

PART III

ADOPTION

Interpre-
tation

59.—(1) In this Part and Part IV,

- (a) “adoption agency” means a corporation without share capital having objects of a charitable nature,

R.S.O. 1970,
c. 89

- (i) to which Part III of *The Corporations Act* applies, or

- (ii) that is incorporated under a general or special Act of the Parliament of Canada,

and that places children under eighteen years of age for adoption and includes a society;

- (b) “licence” means a licence issued under this Act;

- (c) “relative of the child” means a grandparent, uncle or aunt of the child, whether the relationship is of whole blood, half blood or by marriage, and notwithstanding that the relationship is traced through or to a person born outside marriage or that the relationship depends on the adoption of any person. R.S.O. 1970, c. 64, s. 69, *amended*.

Idem

(2) In this Part, “child” means a person whether under eighteen years of age or eighteen or more years of age.

Licence
required

60.—(1) No person other than a society shall establish, operate or maintain an adoption agency except under the authority of a licence issued by a Director under this Act.

(2) Subject to section 61, any person who is a corporation without share capital having objects of a charitable nature, Issuance of licence

(a) to which Part III of *The Corporations Act* applies; R.S.O. 1970, c. 89
or

(b) that is incorporated under a general or special Act of the Parliament of Canada,

and who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain an adoption agency and pays the prescribed fee is entitled to be issued a licence by a Director subject to such terms and conditions as the Director may prescribe.

(3) Subject to section 61, a Director shall renew a licence of an adoption agency on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee, and the renewal shall be subject to such terms and conditions as the Director may prescribe. Renewal of licence

(4) Subject to section 61, where an applicant under subsection 2 or 3, as the case may be, for a licence or a renewal of a licence does not meet all the requirements for the issuance of a licence or renewal thereof and requires time to meet such requirements, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for such period or periods as the Director considers necessary to afford the applicant an opportunity to meet the requirements. Provisional licence

(5) The Director may, subject to such terms and conditions as the Director may prescribe, issue a licence to a person other than an adoption agency for the placement of a child under eighteen years of age with another person for the purpose of adoption. Licence to person other than adoption agency

(6) A licence is not transferable. Not transferable

(7) A licensee that is a corporation shall notify a Director in writing within fifteen days of any change in the officers or directors of the corporation. *New.* Notice of change

61.—(1) Subject to section 62, a Director may refuse to issue a licence where in the Director's opinion, Grounds for refusal

(a) any of the officers, directors or employees of the applicant are not competent to place children under eighteen years of age for adoption in a responsible

manner in accordance with this Act and the regulations;

- (b) an applicant for a licence under subsection 5 of section 60 who is not a corporation or any employee of the applicant is not competent to place a child under eighteen years of age for adoption in a responsible manner in accordance with this Act and the regulations; or
- (c) the past conduct of any of the officers, directors or employees of the applicant affords reasonable grounds for belief that any of them will not operate an adoption agency in accordance with this Act and the regulations.

Revocation
or refusal
to renew

(2) Subject to section 62, a Director may refuse to renew or may revoke a licence issued to an adoption agency or to a person referred to in subsection 5 of section 60 where in the Director's opinion,

- (a) any officer, director or employee of the licensee has contravened or has knowingly permitted any person under the control or direction of or associated with the officer, director or employee, as the case may be, to contravene,
 - (i) any provision of this Act or the regulations, or
 - (ii) any term or condition of the licence;
- (b) the licensee under subsection 5 of section 60 who is not a corporation, or any employee of the licensee has contravened or knowingly permitted any person under the control or direction of or associated with the employee, as the case may be, to contravene,
 - (i) any provision of this Act or the regulations, or
 - (ii) any term or condition of the licence;
- (c) any person has made a false statement in the application for the licence or renewal thereof, or in any report, document or other information required to be furnished by this Act or the regulations or by any other Act or regulation that applies to the adoption agency or the licensee under subsection 5 of section 60, as the case may be;
- (d) where the applicant is a corporation, a change in the officers or directors of the applicant would, if

the applicant were applying for the licence in the first instance, afford grounds for refusing to issue a licence under clause *c* of subsection 1; or

- (*e*) the adoption agency is operated in a manner that is prejudicial to the health, safety or welfare of the children being placed by the adoption agency for adoption. *New.*

62.—(1) In this section and in sections 63 and 65, Interpretation
“Board” means the Children’s Services Review Board established under *The Children’s Residential Services Act, 1978*. 1978, c. . . .

(2) Where a licensee is dissatisfied with the terms and conditions prescribed by a Director under subsection 2, 3, 4 or 5 of section 60, the licensee may, within fifteen days after the licence is received by the licensee by written notice given to the Director and to the Board, require a hearing by the Board and the Board shall appoint a time for and shall hold a hearing. Hearing

(3) The Board, pursuant to a hearing under subsection 2, may affirm the terms and conditions prescribed by a Director under subsection 2, 3, 4 or 5 of section 60 or may cancel such terms and conditions or may prescribe such other terms and conditions in lieu of those prescribed by the Director as it considers proper. Board may impose terms and conditions

(4) For the purposes of subsection 2, a licence shall be deemed to be received by a licensee on the tenth day after the day of mailing of the licence unless the person to whom the licence is issued establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person’s control, receive the licence until a later date. Receipt of licence

(5) Where a Director proposes to refuse to issue a licence under section 61 or to refuse to renew or revoke a licence issued under that section, the Director shall cause notice to be served of the Director’s proposal, together with written reasons therefor, on the applicant or the licensee, as the case may be. Notice of proposal to refuse to issue or to revoke

(6) A notice under subsection 5 shall inform the applicant or licensee, as the case may be, that the applicant or licensee is entitled to a hearing by the Board if the applicant or licensee mails or delivers, within fifteen days after the notice is served on the applicant or licensee, notice in writing to the Director and to the Board requiring a hearing, and the applicant or licensee, as the case may be, may so require such a hearing. Notice requiring hearing

Powers of
Director
where no
hearing

(7) Where an applicant or licensee does not require a hearing by the Board in accordance with subsection 6, the Director may carry out the proposal stated in the Director's notice under subsection 5 without a hearing.

Continuation
of licence
pending
renewal

(8) Where, within the time prescribed therefor or, if no time is prescribed, before expiration of a licence, a licensee has applied for renewal of a licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Board has made its decision. *New.*

Application

63. Sections 6, 8, 10 and 11 of *The Children's Residential Services Act, 1978* apply with necessary modifications to a notice under subsection 2 or 5 of section 62, to proceedings before the Board and to the powers of the Board under section 62 and to appeals therefrom. *New.*

Suspension
of licence

64. Notwithstanding section 62, a Director may, by causing notice to be served on an adoption agency or a licensee under subsection 5 of section 60, as the case may be, and without a hearing, provisionally suspend the licence of the adoption agency or the licensee where, in the opinion of the Director, the operation of the adoption agency or the licensee is an immediate threat to the health, safety or welfare of the children or child placed or to be placed by the adoption agency or the licensee, as the case may be, for adoption and the Director so states in such notice giving reasons therefor, and, upon suspension, the provisions of sections 62 and 63 apply as if the notice given under this section were a notice of a proposal under subsection 2 of section 62 to revoke the licence. *New.*

Child to be
placed by
licensee

65.—(1) No person other than an adoption agency or licensee under subsection 5 of section 60 shall,

(a) place or cause to be placed a child under eighteen years of age with another person; or

(b) take or send or attempt to take or send any child under eighteen years of age who is a resident of or who was born in Ontario, out of Ontario,

for the purpose of adoption.

(2) No person shall receive a child under eighteen years of age for the purpose of adoption without the prior approval of a Director under subsection 7. ^{Approval of Director required}

(3) Every adoption agency or licensee under subsection 5 of section 60 that proposes, ^{Notice to Director}

(a) to place a child under eighteen years of age; or

(b) to take or send a child under eighteen years of age who is a resident of or was born in Ontario, out of Ontario to be placed,

for the purpose of adoption, shall in advance of the placement notify a Director of the proposed placement.

(4) Subsections 1, 2 and 3 do not apply to,

^{Application}

(a) the placement of a child with a relative of the child or with the spouse of a parent of the child; or

(b) the taking or sending of a child out of Ontario,

(i) by a parent of the child for adoption by the spouse of the parent of the child, or

(ii) for placement of the child with a relative of the child for the purpose of adoption.

(5) Subsections 2 and 3 do not apply to the placement of a child by a society. ^{Idem}

(6) The Director shall forthwith after receiving a notice under subsection 3 obtain a report of a homestudy made by a person who, in the opinion of the Director or local director of a society, is qualified to make the homestudy of the person proposing to adopt the child. ^{Homestudy}

(7) The Director shall forthwith, after receiving the report of the results of the homestudy, approve the proposed placement for adoption or notify the adoption agency or the licensee under subsection 5 of section 60, as the case may be, and the person proposing to adopt the child of the Director's proposal to refuse approval of the placement and that the adoption agency or licensee and the person proposing to adopt the child are entitled to a hearing before the Board and the provisions of sections 6, 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to a notice under this subsection to proceedings before the Board and to powers of the Board. ^{Decision of Director, etc.} 1978, c. . . .

Supervision
of placement
by society

(8) Where the Director approves the proposed placement for adoption under subsection 7, the Director may direct a society, or in the case of a placement out of Ontario may arrange for a child protection agency recognized in the jurisdiction of the placement, to supervise the placement subject to such terms and conditions as the Director may prescribe. *New.*

Hearing

(9) Where the person proposing to adopt the child, the adoption agency or the licensee under subsection 5 of section 60, as the case may be, is dissatisfied with the terms and conditions prescribed by a Director under subsection 8, the person, the adoption agency or licensee, upon giving notice is entitled to a hearing before the Board and the provisions of sections 7, 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to such notice to proceedings before the Board and to powers of the Board.

Powers of
Director
where no
hearing

(10) Where a person proposing to adopt the child, the adoption agency or the licensee under subsection 5 of section 60, as the case may be, does not require a hearing by the Board in accordance with subsection 7, the Director may carry out the proposal stated in the Director's notice under that subsection without a hearing.

Review by
Director

66. Notwithstanding subsection 3 of section 69, a Director, with or without the request of any person, may review the decision of any adoption agency or licensee under subsection 5 of section 60 to refuse to place a child with a person for the purpose of adoption by that person or to remove the child who has been placed with a person for the purpose of adoption and the Director may confirm the decision of the adoption agency or licensee, as the case may be, or rescind the decision and the Director may give such direction, make any further decision or take any further step that an adoption agency or licensee under subsection 5 of section 60 is authorized to make, give or take under this Act. *New.*

Prohibition
against
payments
for
adoptions

67.—(1) Subject to subsection 2, no person, whether before or after the birth of a child, shall make, give or receive or agree to make, give or receive a payment or reward for or in consideration of or in relation to,

- (a) the adoption or proposed adoption of the child under this Part;
- (b) the giving of consent or the signing of an instrument of consent to the adoption of the child under this Part;

(c) the transfer of the custody or control of the child with a view to the adoption of the child under this Part; or

(d) the conduct of negotiations or the making of arrangements with a view to the adoption of the child under this Part.

(2) Subsection 1 does not apply to the payment of expenses ^{Idem} of an adoption agency or licensee under subsection 5 of section 60 or the payment of legal expenses in connection with an adoption or proposed adoption under this Part. R.S.O. 1970, c. 64, s. 88, *amended*.

68. Every society shall endeavour to secure the adoption ^{Duty of society to secure adoption} of Crown wards, having regard to the best interest of each Crown ward. R.S.O. 1970, c. 64, s. 86 (1).

69.—(1) In this section, “parent” includes,

^{Interpre-}
tation

(a) a guardian;

(b) a person who has demonstrated a settled intention to treat a child as a child of the person’s family; and



(c) a person who is not recognized in law to be a parent of a child but,

(i) has acknowledged a parental relationship to the child and has voluntarily provided for the child’s care and support,

(ii) by an order of a court of competent jurisdiction or a written agreement, is under a legal duty to provide for the child or has been granted custody of or access to the child, or

(iii) has made a written acknowledgment of the fact of his or her parentage to the adoption agency or licensee under subsection 5 of section 59 placing the child for adoption,

but does not include the Crown, a society or a foster parent of a child. *New.*



Consent

(2) An order for the adoption of a child under eighteen years of age and who has not been married shall be made only with the written consent, given after the child is seven days old, of every person who is a parent or who has lawful custody or control of the child, but any person who has given his or her consent may cancel it by a document in writing to that effect within twenty-one days after the consent is given. R.S.O. 1970, c. 64, s. 73 (1, 2); 1971, c. 98, s. 4, Sched., par. 6, *amended*.

Rights and responsibilities

(3) Upon the giving of all the consents required under subsection 2, all the rights and responsibilities of a legal guardian of the child for the purpose of the child's care, custody and control belonging to the person or persons giving the consents shall, where the child is being placed for adoption by an adoption agency and, subject to subsection 11, transfer to, be vested in and be assumed by the adoption agency so long as the consents remain in force and until an adoption order is made.

Idem

(4) Notwithstanding subsection 3, the rights and responsibilities of a legal guardian of the child shall not transfer to an adoption agency until the twenty-one day period for cancellation of the consent given under subsection 2 has expired.

Idem,
Crown ward

(5) An order for the adoption of a child who is a Crown ward shall be made only with the written consent of a Director, in which case no other consent, except a consent required under subsection 6, is required. R.S.O. 1970, c. 64, s. 73 (3), *amended*.

Idem,
child and
where
married,
spouse of
child

(6) An order for the adoption of a child who is seven or more years of age shall be made only with the written consent of the child, and, where the child is married, with the written consent of the spouse except that the court may dispense with the consent of the child if the court is satisfied that, having regard to all the circumstances of the case, the consent would not be appropriate. R.S.O. 1970, c. 73 (4); 1975, c. 1, s. 31 (1).

Where
consent
not
given

(7) Where a consent required by this section has not been given, the court upon application by the applicant for the adoption may dispense with the requirement if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the requirement be dispensed with.

(8) The court shall not dispense with a consent required ^{Notice} under this section, except a consent required under subsection 6, until the court is satisfied that the person from whom the consent is required has had notice of the application for adoption and notice of the application to dispense with the consent, or that reasonable effort has been made, in the opinion of the court, to cause such person to be notified. R.S.O. 1970, c. 64, s. 73 (5, 6).

(9) Where a consent required by this section has been ^{Where consent given} given, it may after the twenty-one days referred to in subsection 2 and subject to subsections 10 and 11, be withdrawn by the person giving it only if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the consent be withdrawn. R.S.O. 1970, c. 64, s. 73 (7); 1975, c. 1, s. 31 (2).

(10) Subject to subsection 11, an application to the court ^{Consent not to be withdrawn} for the withdrawal of a consent given under subsection 2 shall not be made after the child has been placed for adoption by an adoption agency or licensee under subsection 5 of section 60 so long as the child remains in the care of the person with whom the child was placed for adoption.

(11) Where all the consents required under subsection 2 ^{Review by Director} have been given and, after the expiration of one year from the giving of the consents under subsection 2 or from a review of the child's status under this subsection, whichever is later, whether or not the child has been placed for adoption, an order for the adoption of the child has not been made, the adoption agency or licensee under subsection 5 of section 60, as the case may be, shall notify a Director and the Director or any person authorized by the Director shall review the status of the child and after such review the Director or such person, having regard to the best interests of the child, may,

- (a) where the adoption agency or licensee is not a society direct the adoption agency or licensee to place the child into the care and custody of a society designated by the Director;
- (b) where the child is in the care, custody and control of a society, direct the society to bring the child before the court under Part II to determine whether an order under section 30 should be made and thereafter the provisions of sections 28 to 36 apply, with necessary modifications, to the child.

Consent

(2) An order for the adoption of a child under eighteen years of age and who has not been married shall be made only with the written consent, given after the child is seven days old, of every person who is a parent or who has lawful custody or control of the child, but any person who has given his or her consent may cancel it by a document in writing to that effect within twenty-one days after the consent is given. R.S.O. 1970, c. 64, s. 73 (1, 2); 1971, c. 98, s. 4, Sched., par. 6, *amended*.

Rights and
responsi-
bilities

(3) Upon the giving of all the consents required under subsection 2, all the rights and responsibilities of a legal guardian of the child for the purpose of the child's care, custody and control belonging to the person or persons giving the consents shall, where the child is being placed for adoption by an adoption agency and, subject to subsection 11, transfer to, be vested in and be assumed by the adoption agency so long as the consents remain in force and until an adoption order is made.

Idem

(4) Notwithstanding subsection 3, the rights and responsibilities of a legal guardian of the child shall not transfer to an adoption agency until the twenty-one day period for cancellation of the consent given under subsection 2 has expired.

Idem.
Crown ward

(5) An order for the adoption of a child who is a Crown ward shall be made only with the written consent of a Director, in which case no other consent, except a consent required under subsection 6, is required. R.S.O. 1970, c. 64, s. 73 (3), *amended*.

Idem.
child and
where
married,
spouse of
child

(6) An order for the adoption of a child who is seven or more years of age shall be made only with the written consent of the child, and, where the child is married, with the written consent of the spouse except that the court may dispense with the consent of the child if the court is satisfied that, having regard to all the circumstances of the case, the consent would not be appropriate. R.S.O. 1970, c. 73 (4); 1975, c. 1, s. 31 (1).

Where
consent
not
given

(7) Where a consent required by this section has not been given, the court upon application by the applicant for the adoption may dispense with the requirement if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the requirement be dispensed with.

(8) The court shall not dispense with a consent required ^{Notice} under this section, except a consent required under subsection 6, until the court is satisfied that the person from whom the consent is required has had notice of the application for adoption and notice of the application to dispense with the consent, or that reasonable effort has been made, in the opinion of the court, to cause such person to be notified. R.S.O. 1970, c. 64, s. 73 (5, 6).

(9) Where a consent required by this section has been ^{Where consent given} given, it may after the twenty-one days referred to in subsection 2 and subject to subsections 10 and 11, be withdrawn by the person giving it only if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the consent be withdrawn. R.S.O. 1970, c. 64, s. 73 (7); 1975, c. 1, s. 31 (2).

(10) Subject to subsection 11, an application to the court ^{Consent not to be withdrawn} for the withdrawal of a consent given under subsection 2 shall not be made after the child has been placed for adoption by an adoption agency or licensee under subsection 5 of section 60 so long as the child remains in the care of the person with whom the child was placed for adoption.

(11) Where all the consents required under subsection 2 ^{Review by Director} have been given and, after the expiration of one year from the giving of the consents under subsection 2 or from a review of the child's status under this subsection, whichever is later, whether or not the child has been placed for adoption, an order for the adoption of the child has not been made, the adoption agency or licensee under subsection 5 of section 60, as the case may be, shall notify a Director and the Director or any person authorized by the Director shall review the status of the child and after such review the Director or such person, having regard to the best interests of the child, may,

- (a) where the adoption agency or licensee is not a society direct the adoption agency or licensee to place the child into the care and custody of a society designated by the Director;
- (b) where the child is in the care, custody and control of a society, direct the society to bring the child before the court under Part II to determine whether an order under section 30 should be made and thereafter the provisions of sections 28 to 36 apply, with necessary modifications, to the child.

- (c) where the child is in the care of the person with whom the child has been placed for adoption, confirm the placement of the child with that person or give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency or licensee is authorized to make, give or take under this Act;
- (d) where the child leaves or is removed from the care of the person with whom the child has been placed for adoption, give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency or licensee is authorized to make, give or take under this Act; or
- (e) direct the adoption agency or licensee to return the child to the care of the person giving the consent under subsection 2 where that person had charge of the child at the time the consent was given and has agreed to receive the child back into care, and upon giving such direction, every consent to the adoption given under subsection 2 shall be deemed to be withdrawn.

Application
to judge

(12) Where an application is made to the court under Part II pursuant to clause *b* of subsection 11, the child shall be brought before the court as if the child had been apprehended pursuant to section 21 or 22 and the child may be dealt with by the court in the same manner as though the child were a child apparently in need of protection. *New.*

Consent not
invalid by
reason of
age

(13) No consent required by this section is invalid by reason only of the fact that the person giving it is under eighteen years of age except that, in the case of a consent required under subsection 2 given by a person under eighteen years of age the consent is not valid unless the Official Guardian is satisfied that the consent reflects the true informed wishes of the person. R.S.O. 1970, c. 64, s. 73 (8); 1971, c. 98, s. 4, Sched., par. 6, *amended.*

Interference
with
child, etc.

(14) Subject to a direction of a Director under subsection 11 to the child, no person shall,

- (a) visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or

interfere with a child who has been placed for adoption by an adoption agency or licensee under subsection 5 of section 60; or

- (b) visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a person or persons with whom the child has been placed for adoption,

after the giving of all the consents under subsection 2, and before an order for the adoption of the child has been made, without the consent in writing of the adoption agency or licensee, as the case may be.

(15) Upon the placement of a child under eighteen years of age by an adoption agency or licensee under subsection 5 of section 60 for the purpose of adoption, and upon the giving of all the consents required under subsection 2, any outstanding order of access with respect to the child, other than an order of access made under this Act, shall terminate. *New.* Termination
of access
order

70. An affidavit of execution in the prescribed form shall be attached to every consent required under this Part and to every cancellation under subsection 2 of section 69. R.S.O. 1970, c. 64, s. 74, *amended.* Affidavit of
execution

71.—(1) The court in the county or district in which either the applicant or the child sought to be adopted resides at the time the application for an adoption order is filed has jurisdiction to make the order. R.S.O. 1970, c. 64, s. 70 (1); 1975, c. 1, s. 29 (1), *amended.* Jurisdiction
of courts

(2) An application for an adoption order shall be heard and determined *in camera*. R.S.O. 1970, c. 64, s. 70 (2), *amended.* Application
to be heard
in camera

(3) Where the court referred to in subsection 1 is satisfied that there is preponderance of convenience in favour of hearing the application for adoption in another county or district, the court may, at any time after the application is made and before the hearing of the application, transfer the proceedings to a court in any other county or district. Transfer of
proceedings

(4) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. *New.* Affidavit
evidence

(5) Where an application for an adoption order is not heard by the court within the twelve months next following Stale
applications

and the Director, in making a recommendation under clause *a* or *b*, may bring to the attention of the court any additional circumstances of the case that, in the Director's opinion, the court may wish to take into account before making or refusing the order.

Filing of
notice

(2) Where a Director recommends that an adoption order should not be made, the Director shall file a copy of the statement under subsection 1 with the court at least thirty days prior to the hearing and the Director shall cause a copy of the statement to be served upon the applicant within seven days after the Director filed the statement with the court.

Statement
of local
director

(3) In the case of a child referred to in subsection 1 who has been placed for adoption by a society, the statement referred to in clause *a* of that subsection is sufficient if it is made by the local director.

Report

(4) A Director or local director before making a recommendation under subsection 1 shall obtain a report on the adjustment of the child in the home of the applicant made by the society with jurisdiction in the area where the applicant resides, or by such other person who has received prior approval from the Director or local director, as the case may be. 1975, c. 1, s. 32, *amended*.

Application

(5) Subsections 1 and 4 do not apply to an application for adoption of a child,

(a) by a relative of the child; or

(b) by the spouse of the child's parent,

unless the court hearing the application so directs. *New*.

Duty of
court

76. The court before making an adoption order shall be satisfied,

(a) that every person who has given a consent under this Part understands the nature and effect of the adoption order; and

(b) that the order will be in the best interests of the child. R.S.O. 1970, c. 64, s. 77.

Procedure
on
application

77. Upon the hearing of an application for adoption, where the child is seven or more years of age, the court shall inquire into the capacity of the child to appreciate the nature of the application and shall, where practicable, hear the child. R.S.O. 1970, c. 64, s. 76.

78.—(1) Subject to subsection 3, when making an adoption ^{Surname} order, the court may order that the adopted child,

- (a) retain the surname by which the child was known immediately prior to the adoption; or
- (b) assume the surname of either or both of the adopting parents.

(2) Subject to subsection 3, in an adoption order, the court ^{Given names} may in its discretion change the given name or names of the child as the adopting parent desires, and thereafter the adopted child is entitled to and is to be known by the name or names so given. R.S.O. 1970, c. 64, s. 78, *amended*.

(3) In the case of a child fourteen or more years of age, the court shall not make an order under this section changing the given name or the surname of the child without the written ^{Consent required} consent of the child. *New*.

79. If the adopted child was born outside marriage, ^{Born outside marriage not to appear} that fact shall not appear upon the adoption order. R.S.O. 1970, c. 64, s. 79, *amended*.

80.—(1) Subject to subsection 6 of section 81, the ^{Papers to be sealed up} documents used upon an application for an adoption order shall be sealed up and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of a Director.

(2) Within thirty days after the making of an adoption ^{Trans- mission of order} order, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit,

- (a) the original order to the adopting parent;
- (b) one certified copy to a Director;
- (c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and
- (d) where the adopted child is a member of a band within the meaning of the *Indian Act* (Canada), one ^{R.S.C. 1970, c. I-6} certified copy to the Registrar under that Act. R.S.O. 1970, c. 64, s. 80, *amended*.



81.—(1) In this section, “Director” means an employee ^{Interpre- tation} of the Ministry appointed by the Minister for the purposes of this section.

Voluntary
disclosure
registry

(2) An adopted child who is eighteen or more years of age and a person who was a parent of an adopted child at the time of the child's birth where the adoption took place in Ontario in each instance may apply to a society to be registered in a voluntary disclosure registry that shall be maintained by the Director.

Society
to notify
Director

(3) Every society that receives an application under subsection 2 shall forthwith forward a copy of the application to the Director who shall enter the applicant's name in the voluntary disclosure registry.

Information
confidential

(4) Notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the voluntary disclosure registry established under subsection 2, except with the written permission of the Director.

Director to
determine
if both
parent and
child are
registered

(5) The Director shall upon entering an applicant's name in the voluntary disclosure registry examine the registry to determine,

- (a) where the applicant is an adopted child, if a person who was the child's parent at the time of the child's birth is named in the registry; or
- (b) where the applicant is a person who was a parent of an adopted child at the time of the child's birth, if the adopted child is named in the registry.

Idem

(6) Where the Director,

- (a) determines that both an adopted child and a person who was the child's parent at the time of the child's birth are named in the voluntary disclosure registry;
- (b) obtains from any living person who was the parent of the child after an adoption order with respect to the child was made, consent to the disclosure of information pursuant to this section; and
- (c) obtains a confirmation from each of the parties referred to in clause *a* that they agree to the disclosure of information pursuant to this section,

the Director shall forthwith forward to the appropriate society the information contained in,

(d) the documents referred to in subsection 1 of section 80; and

(e) the voluntary disclosure registry,

with respect to the adopted child and the person who was the child's parent and the society shall provide the information to the adopted child and the person who was the child's parent.

(7) Every society shall provide guidance and counselling to persons who may be registered in the voluntary disclosure registry referred to in subsection 2. *New.*

Society to provide guidance and counselling

82.—(1) Upon an application for an adoption order, the court, after considering any recommendation made by a Director, may postpone the determination of the application and make an interim order giving the custody of the child sought to be adopted to the applicant for a period not exceeding one year by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the child and otherwise as the court thinks fit. R.S.O. 1970, c. 64, s. 81 (1); 1975, c. 1, s. 33 (1).

Interim order

(2) An interim custody order is not an adoption order.

Idem

(3) All consents required for an adoption order are necessary for an interim custody order, subject to a like power in the court to dispense with any such consent requirement. R.S.O. 1970, c. 64, s. 81 (2, 3).

Consents

(4) Where an applicant has obtained an interim custody order and subsequently takes up residence outside Ontario, the court may nevertheless make the adoption order applied for if a Director makes a recommendation in favour of the order under section 75. R.S.O. 1970, c. 64, s. 81 (4); 1975, c. 1, s. 33 (2).

Residence outside Ontario

83. Subject to section 84, an order granting an adoption shall be final and irrevocable and shall not be questioned or reviewed in any court of competent jurisdiction by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review. *New.*

Order final

84.—(1) An applicant for an adoption order, or a Director or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, may appeal to the county or district court of the county or

Appeal

district in which the decision was made from the decision granting or refusing an adoption order.

Idem

(2) An applicant for an adoption order, a Director, or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, or a person who has given consent under subsection 2 of section 69 may appeal to the county or district court of the county or district in which the decision was made from the decision of the court made pursuant to subsection 9 of section 69, granting or refusing the withdrawal of a consent to the adoption.

Idem

(3) An applicant for an adoption order, a Director, or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, a person who has given consent under subsection 2 of section 69 or a person with respect to whom a consent required under subsection 2 of section 69 has been dispensed with may appeal to the county or district court of the county or district in which the decision was made from the decision of the court made pursuant to subsection 7 of section 69, granting or refusing the dispensing of the requirement of the giving of consent.

Appeal
in camera

(4) An appeal under subsection 1, 2 or 3 shall be heard *in camera* and notice of the appeal shall be served on a Director.

Notice

(5) A notice of appeal under subsection 1, 2 or 3 shall be served within thirty days of the making of the decision being appealed and no extension of the time for serving the notice or making the appeal shall be granted. *New.*

Effect of
order on
previous
adoption

85. An adoption order or an interim custody order may be made in respect of a child who has previously been the subject of an adoption order, and the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the child for the purposes of this Part. R.S.O. 1970, c. 64, s. 82.

Status of
adopted
child

86.—(1) For all purposes, as of the date of the making of an adoption order,

- (a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was his or her parent before the adoption

order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adopting parent,

as if the adopted child had been born to the adopting parent and all the rights and responsibilities of a legal guardian of the child that have vested in any adoption agency pursuant to subsection 3 of section 69 are terminated. R.S.O. 1970, c. 64, s. 83 (1), *amended*.

(2) The relationship to one another of all persons whether the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made, the kindred of that former parent or any other person shall, for all purposes, be determined in accordance with subsection 1. R.S.O. 1970, c. 64, s. 83 (2). Application of subs. 1 to relationship of persons

(3) In any will or other document, whether heretofore or hereafter in existence, and whether or not the maker of the will or other document was alive at the date of the coming into force of this section, unless the contrary is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of the person's own adoption or the adoption of another person. 1975, c. 1, s. 34 (1), *amended*. References in will or other document

(4) This section applies and shall be deemed to have always applied with respect to any adoption made under any legislation heretofore in force, but not so as to affect, Application of section

(a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and

(b) any interest in property or right that has indefeasibly vested before the coming into force of this section. 1975, c. 1, s. 34 (2).

(5) Subsections 1 and 2 do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove any person from a relationship in consanguinity that, but for this section, would have existed. R.S.O. 1970, c. 64, s. 83 (4). Exception

87.—(1) An adoption effected according to the law of any other province or territory of Canada or of any other state Effect of adoptions under other laws

or country or part thereof, before or after the commencement of this section, has the same effect in Ontario as an adoption under this Act. R.S.O. 1970, c. 64, s. 85.

Idem

(2) Where, as a requirement of the making of an order or orders of a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof, that effects an adoption of a child according to the laws of the jurisdiction where the order or orders were made, any statement, consent, declaration or similar document in writing is made by a person, organization, province, state, country or legal representative of any of them, in whom the rights and responsibilities of guardianship in respect of the child have been legally vested, such statement, consent, declaration or similar document in writing shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

Subsidies

88. Where, in the opinion of the Minister, the best interests of a child may be served by granting a subsidy to the adopting parent of the child, the Minister may out of moneys appropriated therefor by the Legislature authorize payments, from time to time and upon such terms and conditions as the Minister may prescribe, of such amounts as are necessary for such purposes. *New*.

PART IV

GENERAL

Regulations

89.—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing additional powers and duties of a Director;
2. prescribing the records that shall be kept by societies and the returns and reports that shall be made by societies under this Act;
3. requiring societies to provide such information and to make such returns and reports as are prescribed and prescribing the persons or agencies to whom such information and returns are to be given and reports are to be made;
4. governing the qualifications of persons or classes of persons employed by or involved in the management and operation of societies;

5. prescribing provisions to be included in the by-laws of societies;
6. defining "net expenditures";
7. prescribing expenses that may be charged for services under this Act and classes of such expenses and the terms and conditions under which any such expense or class thereof may be charged;
8. prescribing the manner of determining the proportion of an approved estimate that is referable to each municipality in the area served by a society for the purposes of subsection 6 of section 8;
9. prescribing additional powers and duties of a child welfare review committee appointed under section 12;
10. determining the amounts of payments under subsections 1 and 2 of section 13 and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
11. providing for payments to reimburse a municipality for all or any part of any increase in its financial obligations to a society under this Act and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
12. determining the costs to municipalities and to societies for the purposes of section 14;
13. determining the amounts of payments to be made to municipalities and societies under section 14 and providing for classes of such payments and the terms and conditions under which such payments or class or classes thereof may be made;
14. prescribing the times and manner of payment of capital grants under section 14;
15. prescribing "special needs" of children,
 - i. for which joint facilities may be established under section 16, and

ii. for the purpose of subsection 4 of section 25;

16. prescribing terms and conditions to be included in any agreement or class of agreement entered into under section 25;
17. for the purposes of subsection 9 of section 25, prescribing the manner of determining the nature and degree of a developmental handicap that would render a child incapable of consenting to an agreement made under that section;
18. governing the construction, alteration, renovation, extension and furnishing and equipping of homes operated or supervised by societies and providing residential care for children, other than children's residences under *The Children's Residential Services Act, 1978*;
19. prescribing the information that shall be recorded in the register established under subsection 3 of section 52;
20. prescribing the period or periods of time that information or any class thereof shall be maintained in the register established under subsection 3 of section 52 and providing for the expunging of information or any class thereof from the register;
21. prescribing the practice and procedure of the court under this Act or any Part thereof;
22. fixing fees, costs, charges and expenses payable on proceedings under this Act or any Part thereof and providing for dispensing with the payment of such fees, costs, charges and expenses where, owing to lack of means or for any other reason, the court considers such action advisable;
23. prescribing rules and standards governing the establishment and operation of adoption agencies;
24. governing the issuance, renewal and expiration of a licence required under section 60 and prescribing terms and conditions for the issuance, renewal and expiration of licences;
25. prescribing the fees payable by an applicant for a licence or renewal thereof;

26. providing for the inspection of books of account and other records of adoption agencies or licensees under subsection 5 of section 60;
27. governing the qualifications of persons or classes of persons employed by or involved in the management and operation of adoption agencies or licensees under subsection 5 of section 60;
28. requiring adoption agencies or licensees under subsection 5 of section 60 to provide such information and to make such returns and reports as are prescribed and prescribing persons or agencies to whom such information and returns are to be given and reports are to be made;
29. requiring the bonding of,
 - i. adoption agencies or licensees under subsection 5 of section 60, and
 - ii. the employees of adoption agencies or licensees under subsection 5 of section 60,
 or any class thereof, and providing for the forfeiture of the bond and the disposition of the proceeds thereof;
30. prescribing the form and term of bonds that are required and the collateral security that may be required with the bonds;
31. prescribing the records that shall be kept by adoption agencies or licensees under subsection 5 of section 60 and the returns and reports that shall be made by adoption agencies or licensees under this Act;
32. prescribing states and countries for the purposes of section 58;
33. prescribing forms and providing for their use;
34. prescribing the practices and procedures on appeals to the county or district court under sections 43 and 84. R.S.O. 1970, c. 64, s. 89; 1971, c. 109, s. 7; 1975, c. 1, s. 37 (1-6), *amended*.

(2) The Minister shall prescribe,

Idem

- (a) standards of services relating to the purposes set out in subsection 2 of section 6; and

(b) procedures and practices to be followed by societies. *New.*

Inter-
provincial
agreements

90. The Minister, with the approval of the Lieutenant Governor in Council, may on behalf of the Government of Ontario make agreements with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services to or the care or protection of children. *New.*

Service

91.—(1) Unless otherwise provided for in this Act or the regulations, any notice or order required to be given, delivered, filed or served under this Act or the regulations is sufficiently given, delivered, filed or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the person's last known address.

Idem

(2) Where service is made by mail, the service shall be deemed to be made on the tenth day after the day of mailing unless the person on whom service is being made establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date.

Idem

(3) Where any notice is required to be given, delivered, filed or served on a Director under this Act or the regulations or a certified copy of an order is required to be transmitted to a Director under clause *b* of subsection 2 of section 80 such notice or certified copy is sufficiently given, delivered, filed, served or transmitted, as the case may be, on or to a Director if the notice or certified copy is given, delivered, filed, served or transmitted on or to any of the Directors appointed pursuant to subsection 1 of section 2. *New.*

Reference
to parent

92. Except for section 25, a reference in this Act or the regulations to "a parent" or "the parent" shall be deemed to be a reference to every parent of the child unless the context otherwise requires. *New.*

Giving
of notice

93. Where any notice required in proceedings under this Act has not been given, the court may proceed to hear or dispose of the matter as if such notice had been given where the court is satisfied that reasonable effort has been made to cause such notice to be given. *New.*

Offences

94.—(1) Every person who,

- (a) knowingly furnishes false information in any application under this Act or in any statement, report or return required to be furnished under this Act or the regulations;
- (b) fails to comply with an order of the court under subsection 4 of section 35;
- (c) fails to comply with an order made by a Director under subsection 17 of section 52;
- (d) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with any person acting in the performance of the person's duties under section 21, 22 or 23;
- (e) is a parent and who permits his or her child to contravene any provision of subsection 1 or 2 of section 54;
- (f) contravenes any provision of,
 - (i) section 46,
 - (ii) subsection 2 of section 49,
 - (iii) subsection 3 of section 50,
 - (iv) subsection 4, 7 or 8 of section 52,
 - (v) subsection 1 of section 53,
 - (vi) subsection 14 of section 69,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation or in such furnishing of false information, failure, hindrance, obstruction or interference or attempted hindrance, obstruction or interference or contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or, except for a contravention of subsection 2 of section 49, to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes the provisions of,

Idem

- (a) subsection 2 of section 47; or
- (b) subsection 1 or 2 of section 65,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corpora-

tion is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) Every person who contravenes the provisions of subsection 1 of section 48 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both, and for any subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(4) Every person who contravenes the provisions of subsection 1 of section 60 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 for each day on which such offence continues or to imprisonment for a term of not more than three years, or to both.

Idem

(5) Every person who contravenes the provisions of subsection 1 of section 67 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three years, or to both.

Idem

(6) Every person who contravenes subsection 7 of section 57, and every director, officer or employee of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$10,000, or to imprisonment for a term of not more than three years, or both. *New.*

Injunction
proceedings

95.—(1) The society having the care, custody or supervision of the child may apply to the Supreme Court by originating notice for an order enjoining any person acting in contravention of section 46, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

Idem

(2) The adoption agency that placed the child for adoption may apply to the Supreme Court by originating notice for an

order enjoining any person acting in contravention of subsection 14 of section 69, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

(3) A Director may apply to the Supreme Court by originating notice for an order enjoining any person acting in contravention of subsection 1 of section 60, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgement of the Supreme Court. ^{Idem}

(4) Any person may apply to the Supreme Court for an order varying or discharging any order made under subsection 1, 2 or 3. *New.* ^{Idem}

96. The following are repealed:

^{Repeals}

1. *The Child Welfare Act*, being chapter 64, of the Revised Statutes of Ontario, 1970.
2. *The Child Welfare Amendment Act, 1972*, being chapter 109.
3. *The Child Welfare Amendment Act, 1973*, being chapter 75.
4. *The Child Welfare Amendment Act, 1975*, being chapter 1.
5. Paragraph 6 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98.

97. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. <sup>Commence-
ment</sup>

98. The short title of this Act is *The Child Welfare Act*, ^{Short title} 1978.

An Act to revise
The Child Welfare Act

1st Reading

June 8th, 1978

2nd Reading

June 19th, 1978

3rd Reading

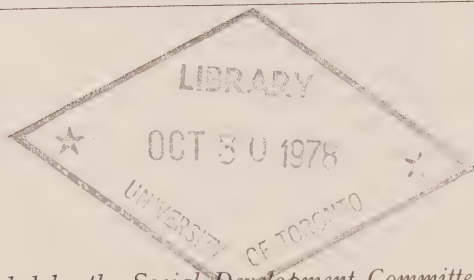
THE HON. KEITH C. NORTON
Minister of Community and
Social Services

(Reprinted as amended by the
Committee of the Whole House)

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

An Act to revise The Child Welfare Act

THE HON. KEITH C. NORTON
Minister of Community and Social Services



(Reprinted as amended by the Social Development Committee)

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EXPLANATORY NOTES

The purpose of the Bill is to repeal, up-date and extend the application of *The Child Welfare Act*.

Some features of the Bill are as follows:

1. *Best Interest Test*

A definition of "best interest" has been included for use by judges as a criterion in choosing among the various orders of disposition that can be made in protection hearings. (s. 1 (b))

2. *Society Budgets*

Provision is made to allow the Ministry to establish the amount of a society budget, where the budget has not been submitted or where municipal approval has not been given within the prescribed periods of time. (ss. 8 to 12)

3. *Capital Grants Payable to Societies*

The discretion of the Ministry to determine the amount of capital grants payable to societies is broadened by deleting minimum percentages prescribed in the Act. (s. 14)

4. *Definition of "Parent"*

For the purposes of determining which parent should be notified of protection hearings and those natural parents whose consents are required for adoption, the existing definitions will be changed to include a wider category of putative fathers. The new definitions bring this legislation into line with the provisions of *The Children's Law Reform Act, 1978*. The existing right of the court to dispense with notice of hearing in protection proceedings on a putative father where the putative father can be located will be deleted. (s. 19 (1) (e)) (s. 69 (1) (c))

5. *"Place of Safety"*

"Place of Safety" is re-defined to ensure that a child who is apprehended is kept in a place supervised or approved by a Director of Child Welfare until the child can be brought before a court. The new definition excludes training schools. (s. 19 (1) (f))

6. *Transfer of Proceedings to Another Court*

The court where a child is taken into care may transfer the proceedings to a family court in another territorial jurisdiction where a "preponderance of convenience" can be shown. (s. 19 (3))

7. *Independent Legal Representation of Children*

The court may direct that independent legal representation be provided for a child in protection proceedings. (s. 20)

8. *Apprehension of Children*

A person or agency other than a society may apply to a court and the court may order a society to apprehend a child apparently in need of protection and to bring the child before a court where the matter has previously been reported to the society and the society either refused or delayed taking steps to apprehend the child. (s. 22 (2))

9. *Care by Agreement*

The present provisions for non-ward agreements are amended to,

- (a) reduce the maximum period of an agreement for temporary care from 24 months to 12 months;
- (b) require the consent of a child over 12 years of age, except a child with a developmental handicap, before entering into an agreement in respect of the child. A child over 12 years of age will have the right to seek a review of his or her own agreement. Such an agreement will terminate 21 days after the child seeks a review unless, in the interim, a further agreement has been arranged;
- (c) provide that an agreement for services may be entered into with a child between 16 and 18 years of age with the consent of the Director. (s. 25)

10. *Detention of Wards*

Where a ward of a society leaves or is removed from the society's care without permission and is apprehended, and taken to an observation and detention home that is approved as a place of safety, such detention shall be confirmed by the court and may not exceed 30 days. (s. 27 (2))

11. *Evidence Needed to Establish Need for Protection*

Evidence of past conduct of a parent or guardian towards the child or any other child in the care of the parent or guardian will be admissible at a hearing in order to determine the need to remove the child from the parent or guardian. (s. 28 (4))

12. *Foster Parents*

A foster parent who immediately prior to the hearing has been caring for a child on behalf of a society for a continuous period of more than 6 months will be entitled to receive notice of a court hearing affecting the child. (s. 28 (7, 9))

13. *Adjournments*

An adjournment of a protection hearing will be limited to 30 days with power to the court to extend the period of adjournment. The right of a society to custody of a child during the adjournment is clarified and the court is empowered to alter custody arrangements during the adjournment period. (s. 28 (13))

14. *Pre-Disposition Assessments*

The court is empowered to order the attendance of a child or a parent of the child for a medical, emotional, developmental or social assessment after the child is found to be in need of protection and before an order of disposition is made. The right of various persons to be provided with a copy of the assessment report is provided for. (s. 29)

15. *Supervision Order*

The authority of a judge to include reasonable terms and conditions relating to the method of supervision is clarified, including the judge's authority to vary or terminate such conditions. (s. 30 (4))

16. *Presence of Child in Court*

A child who is over 10 years of age and who is the subject of a protection hearing is given the right to be present at the hearing unless the court is satisfied that the child's presence will be injurious to the emotional health of the child. Where a child is under 10 years of age, the child shall be excluded from the hearing unless the judge allows the child to be present. (s. 33)

17. *Access Orders*

An order of access may be made either in separate proceedings or as part of other proceedings under Part II. A child over 12 years of age may apply to the court for an order respecting access to the child by any person, but applications for access may be made only at six-month intervals. A society must apply to the court to terminate any outstanding order of access before a Crown ward can be placed for adoption. An access order made under other legislation with respect to a child who is not a ward will terminate when the child is placed for adoption. (ss. 35, 38 (1, 2, 8), 69 (15))

18. *Reasons for Decisions in Protection Hearings*

Reasons shall be part of the record of the court and shall include the specific matters that the society proposes for the child and where the child is removed from the parent, a statement as to why the child cannot be adequately protected without such removal. (s. 36)

19. *Order of Society Wardship*

The maximum period of 24 months for a society wardship will include any period of adjournment, any period during which the child was in care under a non-ward agreement and any period pending appeal of the order of society wardship. The expiration of the 24-month period before the date of an adjourned hearing will not deprive the court of jurisdiction to make a further order, other than an order of society wardship. (s. 37)

20. *Status Reviews*

- (a) A child 12 or more years of age in the care of a society may apply to the court for a review of his or her status. The court can dispense with the right of a child under 10 years of age to receive notice of a hearing to review the child's status. (ss. 32 (4), 37 (2), 38 (1))
- (b) The right of a child and the child's parents to apply for a status review is limited to six-month intervals. (ss. 32 (4), 37 (2), 38 (1))
- (c) The Director is required to review the status of each Crown ward at least every two years and the Director after any such review may order the society to apply to the court for a review of the child's status. (s. 39)
- (d) A notice of intention to adopt previously given to a society by a prospective adoptive parent will no longer be required and the Crown wardship will not be permitted to terminate after a child is placed for adoption until an adoption order is made. No further notice to the natural parent of the child will be required after such placement occurs, unless the Director after reviewing the child's status directs a status review by the court. (s. 38 (7))

21. *Appeals in Protection Proceedings*

Most of the procedural requirements relating to appeals from orders of a family court in protection proceedings have been deleted. It is intended to include these requirements in the rules of the court. (s. 43)

A society's right to retain custody of a child pending the hearing of the appeal is clarified, but the appeal judge may make an order for temporary custody of the child by some other person or agency. (s. 43 (2-6))

The prescribed period for commencing an appeal from a decision relating to Crown wardship cannot be extended by the appeal court after the ward is placed for adoption. (s. 43 (7))



22. *Child Abuse*

A definition of "abuse" is added for reporting purposes. (s. 47 (1))

The reporting of child abuse by those receiving information in their professional or official capacity is made mandatory with penalties for non-compliance. The more general requirement for anyone to report abuse and other forms of neglect will be retained but without a penalty. (s. 49 (1, 2))

The Official Guardian and, in the case of a child in the care of a society, a children's aid society, will be given authority to bring legal proceedings on behalf of a child suffering abuse to recover damages or other compensation. Such proceedings will be brought only if such proceedings are considered to be in the best interests of the child. (s. 51)

The maximum age limit of ten for a child who is left unattended has been removed from the Act but the onus of establishing that reasonable supervision has been provided for a child under 10 years of age who was left unattended is on the accused. (s. 47 (3, 5))

 A society investigating a suspected child abuse may apply to the court for access to records that would assist in the investigation. (s. 55) 

23. *Abuse Registry*

A provincial abuse registry for receiving reports from societies is established under the control of a Director of Child Welfare appointed by the Minister. Access to the registry would be restricted to specific agencies and persons. Suspected abusers whose names appear in the registry will be notified and will be given an opportunity to inspect and seek correction or expungement of information in the registry. An appeal to the courts is given from a refusal by the Director to amend the registry. Information identifying those who report child abuse to a society would be excluded from the registry. The records relating to the registry would not be admissible in any other court proceedings. (s. 52)

24. *Curfew and Street Trades*

The existing prohibition against boys between 12 and 16 years of age from engaging in street trades at night has been extended to cover all children under the age of 16 years. (s. 54)

25. *Access to a Hearing by Public and News Media*

The provisions of the Act that exclude the public and others from court hearings in protection cases are re-enacted to allow an expanded range of exceptions to be made to this general rule, in particular, the

Press and other communication media are given the right to have at least two representatives in any court hearing under this Part, unless the presiding judge excludes them, and the judges must give reason for such exclusion.

The prohibition against publishing information that would identify the parent or child at a hearing is extended to cover any member of the child's family and to anybody charged with a criminal offence under this Part.

These restrictions will also apply to tribunals hearing appeals under this Part. (s. 57)

26. *Licensing of Adoption Agencies and Adoption Placements*

- (a) Placements for adoption, except for adoption by close relatives and step-parents, will have to be routed through adoption agencies or children's aid societies. An exception to this requirement will allow a licence to be issued to a person other than an adoption agency to place a single child for adoption under conditions to be prescribed by regulations and in the licence itself. All adoption agencies that place children for the purposes of adoption (other than children's aid societies) are required to be licensed. (ss. 60 to 65)
- (b) The approval of a Director is required *prior* to the placement of any child under 18 years of age for the purpose of adoption, except placements with close relatives or placements by societies. The Director shall in such cases require a homestudy before a placement is made. (s. 65 (3-6))
- (c) The Director may intervene where any person has been refused placement for adoption or a child placed with the person for adoption has been removed by the agency making the placement. (s. 66)
- (d) Unauthorized interference with a child who is on adoption placement is made an offence. (ss. 69 (14), 92 (1) (f) (vi))

27. *Adoption Consents*

- (a) The Official Guardian must be satisfied that a consent to adoption by a natural parent who is a minor reflects the true informed wishes of the natural parent. (s. 69 (13))
- (b) Where a child is placed for adoption through an adoption agency with the consent of the natural parents, guardianship of the child will vest in the agency when the consent is given and the consent may not be withdrawn and the adoption may proceed without further notice to the natural parents. However, the Director must, once a year, review the status of each child placed for adoption through an agency where the adoption has not yet been completed, and after any such review, the Director may,
 - (i) confirm the placement,
 - (ii) send the child back to his or her natural parents, or
 - (iii) direct that the child be placed with a children's aid society and that the society apply for Crown wardship. The natural parents will have notice of the application for Crown wardship in such circumstances. (s. 69 (11))

28. *Adoption Orders*

- (a) The jurisdiction to make adoption orders is transferred from the county court to the Provincial Court (Family Division). (s. 71)
- (b) A homestudy and a Director's statement before an adoption order is made will no longer be required where the proposed adoption is by a close relative or by a step-parent unless the judge making the order otherwise directs. (s. 75 (5))
- (c) An adoption order is final and irrevocable subject only to the statutory appeal. (s. 82)
- (d) A statutory right of appeal is given against an adoption order or a refusal to make an order but no extension of statutory time required for filing the appeal can be granted. (s. 83)
- (e) The grounds for granting an adoption order for an adult have been broadened. This would allow, at the discretion of the court, the adoption of an adult with a developmental handicap by a family who have been caring for that person. (s. 74)

29. *Adoption Subsidy*

The Minister may grant a subsidy to an adopting parent. (s. 87)

30. *Interprovincial Agreements*

The Minister is authorized to enter into agreements on behalf of the Province with other provinces relating to the care of children. (s. 89)

BILL 114

1978

An Act to revise The Child Welfare Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1. In this Act,

Interpre-
tation

- (a) "approved estimate" means an estimate of net expenditures of a society finally approved under sections 8 to 12;
- (b) "best interests of the child" means the best interests of the child in the circumstances having regard, in addition to all other relevant considerations, to
 - (i) the mental, emotional and physical needs of the child and the appropriate care or treatment, or both, to meet such needs,
 - (ii) the child's opportunity to enjoy a parent-child relationship and to be a wanted and needed member within a family structure,
 - (iii) the child's mental, emotional and physical stages of development,
 - (iv) the effect upon the child of any disruption of the child's sense of continuity,
 - (v) the merits of any plan proposed by the agency that would be caring for the child, compared with the merits of the child returning to or remaining with his or her parent,
 - (vi) the views and preferences of the child, where such views and preferences can reasonably be ascertained,

- (vii) the effect upon the child of any delay in the final disposition in the proceedings,
- (viii) any risk to the child of returning the child to or allowing the child to remain in the care of his or her parent;
- (e) "court", unless otherwise indicated, means a provincial court (family division) or the Unified Family Court;
- (d) "Director" means an employee of the Ministry appointed by the Minister as a director for all or any of the purposes of this Act;
- (e) "judge", unless otherwise indicated, means a provincial judge presiding in a provincial court (family division) or in the Unified Family Court;
- (f) "local director" means the local director of a society appointed under this Act;
- (g) "Minister" means the Minister of Community and Social Services;
- (h) "Ministry" means the Ministry of Community and Social Services;
- (i) "municipality" means the corporation of a county, city, or separated town or a district, metropolitan or regional municipality, but does not include a city or separated town in a district, metropolitan or regional municipality, and in a territorial district means the corporation of a city, town, village or improvement district;
- (j) "prescribed" means prescribed by the regulations;
- (k) "regulations" means the regulations made under this Act;
- (l) "society" means a children's aid society approved by the Lieutenant Governor in Council under this Act. R.S.O. 1970, c. 64, s. 1; 1972, c. 1, s. 19 (3); 1975, c. 1, s. 1, *amended*.

PART I

OFFICERS, SOCIETIES

Appointment
of Director

2.—(1) The Minister may appoint one or more persons to act as a Director. *New.*

Duties of
Director

(2) A Director,

(a) shall advise and supervise societies;

- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;
- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of any place in which a child in the care of a society is placed;
- (e) shall prepare and submit an annual report to the Minister;
- (f) shall keep books of account of all moneys received and disbursed by the Director;
- (g) may designate in writing a place or class of places as a place of safety for the purposes of this Act;
- (h) shall ensure that societies are providing the standard of services and following the procedures and practices prescribed under subsection 3 of section 6;
- (i) shall perform such other duties as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council. R.S.O. 1970, c. 64, s. 2 (1), *amended*.

(3) Where a Director is absent or there is a vacancy in the office of a Director, the powers and duties of the Director shall be exercised and performed by such employee of the Ministry as the Minister designates. R.S.O. 1970, c. 64, s. 2 (3), *amended*. Acting Director

3.—(1) The Minister may by order appoint a judge of the county or district court to make an investigation into any matter, Investigation

- (a) relating to any person in the care of a society; or
- (b) for the due administration of this Act,

and the person appointed shall report the result of the investigation to the Minister. R.S.O. 1970, c. 64, s. 3 (1); 1975, c. 1, s. 3, *amended*.

(2) For the purposes of an investigation under subsection 1, the judge has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1970, c. 64, s. 3 (2); 1971, c. 49, s. 18. Powers on investigation
1971, c. 49

4.—(1) Every society shall appoint a local director who shall be responsible to the board of directors of the society for the administration and enforcement of this Act and the Appointment of local directors

regulations in the area in which the society has jurisdiction, who shall co-operate with a Director to this end and who shall carry out such other duties as are required by the constitution, by-laws and directions of the society.

Powers
of local
directors,
etc.

1974, c. 109

R.S.O. 1970,
c. 374

(2) Every local director and every person designated by the board of directors of a society has for the purposes of this Act the powers of a school attendance counsellor under *The Education Act, 1974* and a police officer, and any one of them shall be deemed to be an officer within the meaning of section 10 of *The Public Authorities Protection Act*, and that section and the other provisions of that Act apply to them in the same manner and to the same extent as they do to the officers mentioned in that section. R.S.O. 1970, c. 64, s. 4, *amended*.

Police
assistance

5. A Director or a local director or any person acting under the authority of either of them may call for aid, in the performance of the duties of the Director, local director or the person, as the case may be, a member of the police force responsible for policing the area in which the aid is required. R.S.O. 1970, c. 64, s. 5, *amended*.

Establish-
ment of
societies
R.S.O. 1970,
c. 89

6.—(1) Every society shall be incorporated under *The Corporations Act* or a predecessor thereof as a corporation without share capital and shall be approved by the Lieutenant Governor in Council.

Purposes

- (2) Every society shall be operated for the purposes of,
- (a) investigating allegations or evidence that children may be in need of protection;
 - (b) protecting children where necessary;
 - (c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
 - (d) providing care for children assigned or committed to its care under this or any other Act;
 - (e) supervising children assigned to its supervision under this or any other Act;
 - (f) placing children for adoption;
 - (g) assisting the parents of children born or likely to be born outside of marriage and their children born outside of marriage; and
 - (h) any other duties given to it by this or any other Act. R.S.O. 1970, c. 64, s. 6 (1, 2), *amended*.

(3) Every society shall,

Standard
of services

(a) provide the standard of services relating to the purposes set out in subsection 2 of section 6; and

(b) follow the procedures and practices,

that shall be prescribed by the Minister.

(4) The by-laws of every society shall contain such provisions as the regulations prescribe, and a certified copy of the by-laws and any amendments thereto shall be filed with a Director forthwith after they are made, and no such by-laws or amendments shall come into operation until they have been approved by the Minister. R.S.O. 1970, c. 64, s. 6 (3, 4), *amended*.

By-laws

7.—(1) A society shall be governed by a board of directors composed of such municipal representatives as are determined under subsections 2 to 6 and the president, one or more vice-presidents, the secretary, the treasurer and such other officers and members as are determined, elected in such manner and for such period as the by-laws of the society provide.

Board of
directors

(2) Where a society has jurisdiction in but not outside a city, separated town or a district, regional or metropolitan municipality, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the city, separated town or the district, regional or metropolitan municipality.

Municipal
representatives

(3) Where a society has jurisdiction in a county but not in a city or separated town, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the county.

Idem

(4) Where a society has jurisdiction in an area that includes a county or part of a county outside a city, separated town or a district, regional or metropolitan municipality,

Idem

(a) one municipal representative shall be appointed from among themselves by the council of each county, city, separated town and the district, regional or metropolitan municipality in the jurisdiction; and

(b) the council of the county, city, separated town or the district, regional or metropolitan municipality having the largest population as determined by the last revised assessment rolls shall appoint from among themselves such other municipal representa-

tives as are required, so that the total number of municipal representatives on the board of directors is not fewer than four.

Idem

(5) In subsections 2 to 4, a reference to a city or separated town does not include a city or separated town in a district, regional or metropolitan municipality.

Idem

(6) Where a society has jurisdiction in an area that includes a district or part of a district outside a city or a district, regional or metropolitan municipality, the municipal representatives shall be appointed in the manner determined under subsection 4, except that the district welfare administration board or the District Child Welfare Budget Board referred to in section 10, as the case may be, shall appoint the representatives required by subsection 4 to be appointed by the council of a county.

Executive
committee

(7) The board of directors of a society shall pass a by-law providing for the election from among their number of an executive committee of nine members, consisting of the president, the treasurer, four municipal representatives and three other directors, and delegating to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the board.

Quorum

(8) A majority of the members of an executive committee constitutes a quorum. R.S.O. 1970, c. 64, s. 7, *amended*.

Estimate
of expendi-
tures

8.—(1) Every society shall before a date to be fixed each year by a Director, which date shall be no later than the last day of February in the year next following, prepare and file with the Director and, subject to subsection 2 and section 10, with each municipality in the area in which the society has jurisdiction, an estimate of its net expenditures, determined in accordance with the regulations, for operations for the year next following.

Minister
may
determine
estimate

(2) Where a society has not filed an estimate in accordance with subsection 1 before the date prescribed therefor by the Director under that subsection, the Minister may at any time thereafter determine the amount of the estimate and cause the estimate to be filed with the society and, subject to subsection 3 of section 10, with each municipality in the area in which the society has jurisdiction.

Estimate
deemed
to be
approved

(3) An estimate filed under subsection 2 shall, subject to subsections 1 and 2 of section 11, be deemed to be approved

by the Minister under subsection 1 of section 9, sixty days after it is filed.

(4) The council of every municipality with whom an estimate is filed in accordance with subsection 1 shall, subject to section 10 and subsection 1 of section 11, grant its approval to the estimate within sixty days from the date fixed by the Director. 1975, c. 1, s. 4, *part, amended*. Approval of estimate by council of municipality

(5) A municipality that has not, within the period of time fixed under subsection 4, Estimate deemed to be approved

(a) granted its approval to the estimate pursuant to subsection 4; or

(b) referred the estimate to a child welfare review committee under section 11,

shall, at the expiration of that period, be deemed to have granted its approval under subsection 4. *New*.

(6) Where a society has jurisdiction in more than one municipality, the portion of the estimate of net expenditures that is referable to each municipality shall, subject to subsection 10 of section 12, be determined in accordance with the regulations. 1975, c. 1, s. 4, *amended*. Proportion referable to each municipality

(7) Subsection 6 does not apply where a district welfare administration board has been established under *The District Welfare Administration Boards Act*. 1975, c. 1, s. 4, *part*. Exception R.S.O. 1970, c. 132

9.—(1) After an estimate has been filed with a Director pursuant to subsection 1 of section 8 and approved by the council of each municipality with whom it was filed, pursuant to subsection 4 of section 8, the Minister may approve the estimate as filed, or, subject to subsection 2 and subsection 2 of section 11, vary the amount of the estimate and approve the estimate as so varied. Approval by Minister

(2) Where the Minister intends to vary the amount of an estimate and to approve the estimate as so varied pursuant to subsection 1, the Minister shall, at least thirty days prior to approving the estimate, cause notice to be given of the Minister's intention to approve or to vary, as the case may be, to the society and to the council of each municipality in the area in which the society has jurisdiction or to the District Child Welfare Budget Board, as the case may be. 1975, c. 1, s. 5, *amended*. Notice by Minister

Interpre-
tation

10.—(1) In this section,

R.S.O. 1970.
c. 132

(a) “district” means a district as defined in *The District Welfare Administration Boards Act*;

(b) “municipality” means a municipality as defined in *The District Welfare Administration Boards Act*.
R.S.O. 1970, c. 64, s. 10 (1).

District
Child
Welfare
Budget
Board

(2) The councils of every municipality in a district in which a district welfare administration board has not been established shall, on or before the 1st day of October in each year, jointly appoint five persons to be a board known as the District Child Welfare Budget Board. R.S.O. 1970, c. 64, s. 10 (2); 1975, c. 1, s. 6 (1).

Approval of
estimates

(3) The estimate of net expenditures of a society in a district shall be approved by the District Child Welfare Budget Board in lieu of the approval by the municipal councils otherwise required by section 8. R.S.O. 1970, c. 64, s. 10 (3); 1975, c. 1, s. 6 (2), *amended*.

Reference
to child
welfare
review
committee

11.—(1) Where the council of a municipality or a District Child Welfare Budget Board does not agree with the amount of the estimate submitted to it by a society pursuant to subsection 1 of section 8 or with the portion of the estimate that is referable to the municipality, it may, on or before the expiration of the time fixed under subsection 4 of section 8 for the approval of the estimate by the municipality or the District Child Welfare Budget Board, as the case may be, request the Minister to refer the matter to a child welfare review committee. R.S.O. 1970, c. 64, s. 11 (1); 1975, c. 1, s. 7 (1), *amended*.

Idem

(2) Where a society, the council of a municipality or a District Child Welfare Budget Board, as the case may be, does not agree with the amount of the estimate,

(a) that has been filed pursuant to subsection 2 of section 8; or

(b) that the Minister intends to approve as varied pursuant to subsection 1 of section 9,

any one of them may,

- (c) in the case of an estimate referred to in clause *a*, before the expiration of sixty days after the filing of the estimate; and
- (d) in the case of an estimate referred to in clause *b*, after receiving notice of the Minister's intention pursuant to subsection 2 of section 9 and before the Minister's approval is given under subsection 1 of section 9,

request the Minister to refer the matter to a child welfare review committee. 1975, c. 1, s. 7 (2), *amended*.

(3) The provisions of subsection 2 apply with necessary ^{Idem} modifications to the council of a municipality or a District Child Welfare Budget Board that does not agree with the portion of the estimate referable to the municipality, where the estimate has been filed by the Minister pursuant to subsection 2 of section 8. *New*.

12.—(1) For the purposes of this section and section 11, ^{Composition of child welfare review committee} a child welfare review committee shall consist of,

- (a) one member appointed by the Minister, who shall be chairman;
- (b) one member appointed by the Ontario Association of Children's Aid Societies; and
- (c) one member appointed by the council of the municipality or the District Child Welfare Budget Board, as the case may be. R.S.O. 1970, c. 64, s. 11 (3), *amended*.

(2) Where a society has jurisdiction in more than one ^{Joint appointment to committee} municipality and there is no District Child Welfare Budget Board, the member to be appointed under clause *c* of subsection 1 shall be appointed jointly by those municipalities. R.S.O. 1970, c. 64, s. 11 (5), *amended*.

(3) Where the Minister receives a request under subsection 1 or 2 of section 11, the Minister shall forthwith appoint the member referred to in clause *a* of subsection 1 and cause notice to be given to the Ontario Association of Children's Aid Societies and the council of the municipality or the District Child Welfare Budget Board, as the case may be, to appoint, within ten days of the notice having been given, the members referred to in clauses *b* and *c* of subsection 1, respectively, and to inform the Minister forthwith of the names of the members appointed. *New*. ^{Appointment of members}

- Notice (4) The Minister shall, after being informed under subsection 3, forthwith cause notice of the names of the members of the child welfare review committee to be given to the parties concerned. R.S.O. 1970, c. 64, s. 11 (4), *amended*.
- Failure to appoint member (5) Where a party who receives a notice to appoint a member to the committee under subsection 3 fails to appoint a member within the time prescribed, the Minister shall, in the place of the party who failed to make the appointment, forthwith appoint the member to the committee. R.S.O. 1970, c. 64, s. 11 (6), *amended*.
- Procedure (6) A child welfare review committee shall be convened by the chairman thereof within ten days after all the members have been appointed and the committee shall determine its own procedures. R.S.O. 1970, c. 64, s. 11 (7), *amended*.
- Evidence (7) A child welfare review committee may receive such written or oral evidence from a Director, the society, the municipality or District Child Welfare Budget Board, as the case may be, or any other person as it in its discretion considers proper whether admissible in a court of law or not and may require the Director to present evidence and make submissions. R.S.O. 1970, c. 64, s. 11 (8), *amended*.
- Idem (8) A Director shall, when required by a child welfare review committee, present evidence and make submissions before the committee. *New*.
- Findings of committee (9) A child welfare review committee shall review the evidence submitted to it and obtain any additional evidence or material it considers necessary and shall report its findings and make recommendations to the Minister within thirty days from the date that the committee first convenes and the findings and recommendations of the committee shall be made available to the parties concerned. R.S.O. 1970, c. 64, s. 11 (9).
- Decision of Minister (10) After reviewing the findings and recommendations of a child welfare review committee, the Minister may approve the estimate filed under subsection 1 or 2 of section 8, vary the amount of the estimate and approve the estimate as so varied or determine the apportionment referred to in subsection 6 of section 8, as the case may be, and the decision of the Minister is final. R.S.O. 1970, c. 64, s. 11 (10), *amended*.
- Notice (11) Notice of the Minister's decision shall be given to the parties concerned within thirty days after the Minister receives the report and recommendations of a child welfare review committee. R.S.O. 1970, c. 64, s. 11 (11), *amended*.

13.—(1) There shall be paid out of the moneys appropriated therefor by the Legislature to each society an amount, determined in accordance with the regulations, of the approved estimate of the society. Payments by Ontario

(2) Every municipality shall pay to the society having jurisdiction in the municipality an amount, determined in accordance with the regulations, of the portion determined in accordance with subsection 6 of section 8, of the approved estimate of the society that is referable to the municipality. Payments by municipality

(3) Any amount payable to a society under this section in respect of an approved estimate, including advances before such estimate is approved, may be paid at such times and in such manner as are determined by the Minister. 1975, c. 1, s. 8, *amended*. Manner of payment

14.—(1) Where the erection, purchase or other acquisition of a building by a municipality or by a society for the occupation in whole or in part by the society for use for a purpose other than to provide facilities and services to meet such special needs of children as are prescribed for the purposes of section 16 has been approved by the Minister, the Minister may, out of the moneys appropriated therefor by the Legislature, direct payment to the municipality or to the society of an amount, determined in accordance with the regulations, of the cost to the municipality or society of the building determined in accordance with the regulations. Capital payments

(2) Where the Minister has approved the erection of a new building, an addition to an existing building, the purchase or other acquisition of an existing building, the structural alteration or the renovation or the furnishing and equipping of a building by a society for the provision of facilities and services to meet such special needs of children as are prescribed for the purposes of section 16, the Minister may direct payment to the society out of moneys appropriated therefor by the Legislature of an amount, determined in accordance with the regulations, towards the cost determined in accordance with the regulations of the new building, addition, acquisition, structural alteration, renovation or furnishing and equipping, as the case may be, that is applicable to the facilities and services. 1972, c. 109, s. 1, *amended*. Idem

15.—(1) The council of any municipality shall pass by-laws for the levying of such amounts as are necessary for the purpose of meeting any liability imposed on the municipality under this Act and may pass by-laws for the Power to make levies

purpose of affording to a society such other assistance as the council considers advisable.

When
society a
local board
R.S.O. 1970,
c. 324

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of *The Ontario Municipal Employees Retirement System Act* and not for any other purpose. R.S.O. 1970, c. 64, s. 15, *amended*.

Special
homes and
services

16. Where two or more societies have concurrent or contiguous jurisdictions they may with the approval of the Minister enter into an agreement establishing a joint committee for the purpose of providing facilities and services for the joint use of the societies to meet such special needs of children as are prescribed by the regulations, and sections 8 to 14 apply to the joint committee, for the purposes for which it was established, in the same manner as if the joint committee were a society. R.S.O. 1970, c. 64, s. 17, *amended*.

Temporary
board

17. Where, in the opinion of the Lieutenant Governor in Council, a society is not able to perform its duties, the Lieutenant Governor in Council may appoint a board of directors who shall be the board of directors of the society for such period as the Lieutenant Governor in Council considers advisable. R.S.O. 1970, c. 64, s. 18, *amended*.

Dissolution
of societies

18. The Lieutenant Governor in Council may, at any time upon the recommendation of the Minister, dissolve a society on such date as the order provides, and upon the dissolution of a society its property vests in the Crown to be held and disposed of in such manner as the Lieutenant Governor in Council determines. R.S.O. 1970, c. 64, s. 19, *amended*.

PART II

PROTECTION AND CARE OF CHILDREN

Interpre-
tation

19.—(1) In this Part and Part IV,

(a) “child” means a person actually or apparently under sixteen years of age, and in the case of a person who is the subject of an order under subsection 1 of section 30, includes a person under eighteen years of age;

(b) “child in need of protection” means,

- (i) a child who is brought, with the consent of the person in whose charge the child is, before a court to be dealt with under this Part,
- (ii) a child who is deserted by the person in whose charge the child is,
- (iii) a child where the person, in whose charge the child is, cannot for any reason care properly for the child, or where that person has died and there is no suitable person to care for the child,
- (iv) a child who is living in an unfit or improper place,
- (v) a child found associating with an unfit or improper person,
- (vi) a child found begging or receiving charity in a public place,
- (vii) a child where the person in whose charge the child is is unable to control the child,
- (viii) a child who without sufficient cause is habitually absent from home or school,
- (ix) a child where the person in whose charge the child is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for the child's health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or otherwise fails to protect the child adequately,
- (x) a child whose emotional or mental development is endangered because of emotional rejection or deprivation of affection by the person in whose charge the child is,
- (xi) a child whose life, health or morals may be endangered by the conduct of the person in whose charge the child is;

- (c) “developmental handicap” means a condition of mental impairment present or occurring during a person’s formative years that is associated with limitations in adaptive behaviour;
- (d) “foster home” means a home, other than the home of the child’s parent, in which a child is placed for care and supervision but not for the purposes of adoption;



(e) “parent” includes,

- (i) a guardian,
- (ii) a person who has demonstrated a settled intention to treat a child as a child of the person’s family, and
- (iii) a person who is not recognized in law to be a parent of a child but,
 1. has acknowledged a parental relationship to the child and has voluntarily provided for the child’s care and support,
 2. by an order of a court of competent jurisdiction or a written agreement, is under a legal duty to provide for the child or has been granted custody of or access to the child, or
 3. has made a written acknowledgment of the fact of his or her parentage to the society having or applying for the care or supervision of the child,

but does not include the Crown, a society or a foster parent of a child;



(f) “place of safety” means a receiving home, foster home, hospital, and such other place or class of places designated in writing by a Director, but does not include a training school under *The Training Schools Act*;

(g) “receiving home” means an institution or home operated or supervised by a society for the temporary care of children. R.S.O. 1970, c. 64, s. 20 (1); 1972, c. 109, s. 2; 1975, c. 1, s. 12 (1-4), *amended*.

R.S.O. 1970,
c. 467

By whom
cases are
to be
heard

(2) Subject to subsection 3 and subsection 3 of section 32, an application in respect of a child under this Part shall be heard by a court in the county or district in which the child

was taken into care. R.S.O. 1970, c. 64, s. 20 (2); 1975, c. 1, s. 12 (5), *amended*.



(3) Where,

Transfer of
proceedings

- (a) a child is taken into care, the court in the county or district in which the child is taken into care; or
- (b) a child is produced before the court under section 21 or 22, the court in the county or district in which the child is produced,

is satisfied that there is a preponderance of convenience in favour of holding the hearing in respect of the child in another county or district, the court may, at any time after an application is made in respect of the child under this Part and before hearing the application, transfer the proceedings to a court in any other county or district.

(4) For the purposes of an application under this Part, where the parent of a child is under eighteen years of age, the Official Guardian shall be the guardian *ad litem* of the parent with the duty of safeguarding the parent's interests before the court unless the court appoints any other person to be guardian *ad litem* for this purpose, and the court may make such order as to the costs of the guardian *ad litem* as the court considers just. R.S.O. 1970, c. 64, s. 20 (4); 1971, c. 98, s. 4, Sched., par. 6, *amended*.



20.—(1) A child may have legal representation at any stage in proceedings under this Part.

Legal
repre-
sentation
of child

(2) Where on an application under this Part a child does not have legal representation, the court shall as soon as practicable in the proceedings, determine whether legal representation is desirable to protect the interests of the child and if at that or any later stage in the proceedings the court determines that legal representation is desirable the court shall direct that legal representation be provided for the child.

(3) In determining whether legal representation is desirable to protect the interests of the child under subsection 2 where,

- (a) the court is of the opinion that there is a difference in the views of the child and,

- (i) the views of the society, or

- (ii) the views of a parent of the child,

and the society intends that the child be removed from the care of his or her parent or any other per-

son or remain in the care of the society pursuant to an order under paragraph 2 or 3 of subsection 1 of section 30, as the case may be;

- (b) the child is in the care of the society and a parent is not present at any stage of the proceedings;
- (c) the child is in the care of the society and is alleged to be a child upon whom abuse, as defined in subsection 1 of section 47, has been inflicted; or
- (d) an order under section 33 excluding the child from the hearing is made or is likely to be made,

the court shall direct that legal representation be provided for the child unless, having regard to the views and preferences of the child, where such views and preferences can reasonably be ascertained the court is satisfied that the interests of the child are otherwise adequately protected.
New.

How child
in need of
protection
brought
before
court

21.—(1) A police officer, a Director, a local director or a person authorized by a Director or the local director, who has reasonable and probable grounds to believe that any child is apparently in need of protection, may,

- (a) without warrant take the child to a place of safety and detain the child there until the matter can be brought before a court; or
- (b) apply to a court for an order requiring the person in whose charge the child is to produce the child before a court at the time and place named in the order. R.S.O. 1970, c. 64, s. 21; 1975, c. 1, s. 13 (1), *amended*.

Idem

(2) A police officer, a Director, a local director or a person authorized by a Director or by a local director, who has reasonable and probable grounds to believe that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society, may without warrant take the child to a place of safety and detain the child there. *New.*

Right of
entry

(3) Where a person authorized under subsection 1 or 2 has reasonable and probable grounds to believe that a child referred to in subsection 1 or 2 is on any premises, the person may without warrant enter the premises, if need be by force, and without warrant search for and remove the child from the premises.

1971, c. 47,
not to apply

(4) The provisions of *The Statutory Powers Procedure Act, 1971* do not apply to proceedings under this section. 1975, c. 1, s. 13 (2), *amended*.

22.—(1) Where it appears to a justice of the peace, on information laid before the justice on oath, Warrant to search for child in need of protection

- (a) that there are reasonable and probable grounds to believe that a child is in need of protection; or
- (b) that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society,

the justice may issue a warrant authorizing a police officer, a Director, a local director or a person authorized by a Director or the local director to search for the child and to take the child to and detain the child in a place of safety. R.S.O. 1970, c. 64, s. 22 (1); 1972, c. 109, s. 3; 1975, c. 1, s. 14, *amended*.

(2) Where, upon application to a court by any person, ^{Idem} the court is satisfied that there are reasonable and probable grounds to believe that a child is in need of protection and that the matter has been reported to a society and the local director of that society or person authorized by the local director has refused, or failed within a reasonable time, to apprehend the child or to apply to a court under section 21 or to apply for a warrant under subsection 1, the court may, after affording the society an opportunity to be heard,

- (a) make an order directing the local director of that society or person authorized by the local director, as the case may be, to search for the child and to take the child to and detain the child in a place of safety until the matter can be brought before a court; or
- (b) order a person in whose charge the child is to produce the child before a court at the time and place named in the order. *New*.

(3) A person authorized by a warrant issued under subsection 1 or an order made under clause *a* of subsection 2, may enter, if need be by force, any house, building or other place specified in the warrant or order and may search for and remove the child therefrom. Right of entry

(4) It is not necessary in an information or warrant under subsection 1 or an application or order under clause *a* of subsection 2 to describe the child by name. R.S.O. 1970, c. 64, s. 22 (2, 3). Name not necessary

23.—(1) In this section, “homemaker” means a person approved by the local director or a Director and who remains or is placed on a premises for the purpose of caring for a child. 1975, c. 1, s. 15, *part*. Interpretation

Homemaker
may remain
on premises

(2) Where it appears to a person entering a premises pursuant to section 21 or 22 that a child, who in the opinion of that person is unable to look after and care for himself or herself, has been temporarily left on the premises without proper or competent care or supervision and that a person having charge of the child is not available or is unable to consent to the placement of a homemaker on the premises, the person entering the premises, instead of taking the child to a place of safety, may,

- (a) remain on the premises; or
- (b) arrange with a society for the placement of a homemaker on the premises,

for the purpose of caring for the child and thereafter, subject to subsections 6, 7 and 8, the provisions of sections 27 to 36 apply with necessary modifications to the child. 1975, c. 1, s. 15, *part, amended*.

Idem

(3) A homemaker remaining or placed on a premises pursuant to subsection 2 may,

- (a) enter and live on the premises; and
- (b) carry on normal housekeeping activities on the premises,

in such manner and to such extent as is reasonably necessary to care for the child and may exercise reasonable control and discipline over the child.

Society or
Director may
provide goods
and services

(4) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society or a Director, as the case may be, may provide goods and services on the premises necessary to properly care for the child. 1975, c. 1, s. 15, *part*.

Protection
from
personal
liability

(5) A person who enters a premises pursuant to section 21 or 22 and who remains or is placed on a premises as a homemaker, pursuant to subsection 2 so long as the person is acting in good faith with reasonable care in the circumstances, is not liable for damages,

- (a) for entering the premises;
- (b) in connection with or arising out of the carrying on of normal housekeeping activities on the premises;
- (c) for providing goods and services necessary to care for any child on the premises; or

- (d) for exercising reasonable control and discipline over any child on the premises. 1975, c. 1, s. 15, *part, amended*.

(6) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society shall forthwith notify or make reasonable efforts to notify the parent or other person having charge of the child, immediately before the homemaker entered the premises, of the placement of the homemaker on the premises. Notice to parent

(7) Notwithstanding subsection 1 of section 30, where an application is made to a court under section 28, the court may order the homemaker to withdraw from the premises or may confirm the placement or entry of the homemaker on the premises for such period as the court considers necessary or until a parent or a person having custody of the child returns to care for the child but, subject to subsection 8, not to exceed thirty days. 1975, c. 1, s. 15, *part*. Order of court

(8) Where a parent or person having custody of the child has not returned before the end of the period set out in the order referred to in subsection 7, a court may, upon application therefor either before or after the expiration of the period of the order, extend the period for such further period of time as the court considers necessary or after a further hearing may make an order under subsection 1 of section 30. 1975, c. 1, s. 15, *part, amended*. Extension of period of order

24. Where a child is in the care of an institution or home and no parent can be located, an officer of the institution or home after making reasonable efforts to locate a parent shall notify the society having jurisdiction in the area where the institution or home is located and the officer may, upon giving notice to the society, apply to a court that may determine that the child, notwithstanding clause *b* of subsection 1 of section 19, is a child in need of protection, and the provisions of sections 28 to 36 apply with necessary modifications to the child. R.S.O. 1970, c. 64, s. 23, *amended*. Child in institution

25.—(1) Subject to the approval of the society, where a parent through circumstances of a temporary nature is unable to make adequate provision for his or her child, the parent may voluntarily place the child into the care and custody of a society with jurisdiction in the area where the parent resides and, where the society agrees to receive the child into care and custody, the society shall enter into a written agreement with the parent for such care and custody for a period, subject to subsection 2, of six months or less. Temporary care by agreement

Extension
of
agreement

(2) Where a Director approves, the parties to an agreement under subsection 1 may agree to extend the agreement for a further period or periods of time that together with the first period shall not exceed twelve months, and the parties may agree to vary any other term or condition of the agreement that is not prescribed by the regulations.

Limitation
on agreement

(3) Notwithstanding subsections 1 and 2, in no case shall an agreement under subsection 1 or any extension of the agreement be made that results in a child being in the care and custody of a society,

(a) as a ward of the society;

(b) pursuant to an agreement under this section; or

(c) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c* for a continuous period of more than twenty-four months.

Special
needs
agreement

(4) Subject to the approval of the society or the Minister, as the case may be, when a parent is unable to provide the services required by his or her child because of the special needs of the child, the parent may voluntarily place the child into the care and custody or under the supervision of a society with jurisdiction in the area where the parent resides or of the Crown, and where the society or the Minister, as the case may be, agrees to receive the child into care and custody or under supervision, the society or the Minister shall enter into a written agreement with the parent,

(a) for the placement of the child into the care and custody or under the supervision of the Crown or the society, as the case may be; or

(b) for the provision by the Minister or the society, as the case may be, of the services required to meet the special needs of the child,

or both, for such period or periods of time, subject to subsection 12, as may be agreed upon between the parties. 1975, c. 1, s. 15, *part, amended*.

Con-
siderations
before
entering
into an
agreement

(5) Before entering into an agreement under this section, the society or the Minister, as the case may be, shall consider what assistance to the child is possible while the child is in

the care of his or her parent or other person and before the society or the Minister assumes care and custody or supervision of the child under an agreement. *New.*

(6) No agreement with a parent under this section is invalid by reason only of the fact that the parent entering into it is under eighteen years of age. 1975, c. 1, s. 15, *part.*

Agreement
not invalid
by reason
of age

(7) The voluntary placement of a child with a society or the provision of services to a child by a society pursuant to an agreement with the society under subsection 4 shall not be made without the consent of a Director.

Consent of
Director

(8) Subject to subsection 9, no agreement under this section or extension thereof shall be entered into under this section in respect of a child twelve or more years of age without the written consent of the child and such consent, subject to subsection 13, shall not be withdrawn.

Consent of
child

(9) The consent required under subsection 8 is not required where the child is not capable of giving the consent because of a developmental handicap determined in accordance with the regulations.

Idem

(10) No agreement under this section or any extension thereof shall extend beyond the eighteenth birthday of the person in respect of whom the agreement has been made.

Age limit

(11) A person sixteen or more years of age and under eighteen years of age or the person's parent where the person is not capable of entering into an agreement because of a developmental handicap determined in accordance with the regulations, may, with the approval of a Director, enter into an agreement under this section with the Minister or a society with jurisdiction in the area where the person resides with respect to the provision of services to such person by the Minister or the society, as the case may be. *New.*

Agreements
with respect
to persons
over sixteen
years of
age

(12) Any party to an agreement made under this section at any time during the period of the agreement or any extension thereof, may terminate the agreement by giving at least twenty-one days notice in writing to the other party or parties, as the case may be, and the agreement shall terminate on the expiration of the period set out in the notice. 1975, c. 1, s. 15, *part, amended.*

Termination
of
agreement

(13) A child who is twelve or more years of age and in respect of whom an agreement under this section was made, at any time during the period of the agreement or any

Idem

extension thereof, upon giving notice in writing to the society or to the Minister, as the case may be, may seek a review of the agreement by the society or the Minister and where,

- (a) the existing agreement is not confirmed; and
- (b) no further agreement is reached,

by the parties and the child within twenty-one days from the giving of the notice, the agreement shall be deemed to be terminated. *New.*

Return
of the
child

(14) Where an agreement under this section or an extension thereof,

- (a) is terminated under subsection 12, as soon as is practicable and within the time period set out in the notice given under that subsection;
- (b) is the subject of a review under subsection 13, upon the expiration of the twenty-one day period referred to in that subsection; or
- (c) expires pursuant to the terms of the agreement or pursuant to subsection 2, before or as soon as is practicable after the expiration thereof,

the society or the Minister, as the case may be, shall,

- (d) cause the child to be returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, but where there is an outstanding order for custody of the child, cause the child to be placed with the person entitled to custody of the child under the order; or
- (e) cause the matter to be brought before a court to determine whether the child is or would be, if left in the charge of or returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, as the case may be, a child in need of protection, and thereafter the provisions of sections 28 to 36 apply, with necessary modifications, to the child. 1975, c. 1, s. 15, *part, amended.*

Application

(15) Subsection 14 does not apply to an agreement entered into under subsection 11. *New.*

Prohibition
on
placement

26. No person shall place a child into the care or custody of a society and no society shall receive a child into its care or custody except,

- (a) where the child is detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22;
- (b) where the care of the child is assumed under section 23;
- (c) pursuant to an order under this Part or any other Act respecting the care or custody of the child;
- (d) pursuant to an agreement under subsection 1 or 4 of section 25;
- (e) pursuant to the authority given under subsection 5 of section 43; or
- (f) pursuant to a consent given under subsection 2 of section 69. *New.*

27.—(1) As soon as is practicable and within five days ^{Detention limited} of detaining a child in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, or of assuming the care of a child under section 23, as the case may be,

- (a) the matter shall be brought before a court to determine whether the child is a child in need of protection;
- (b) the child shall be returned to the parent or other person in whose charge the child was immediately prior to the child's apprehension or to the assumption of the child's care, as the case may be, but, where there is an outstanding order for custody of the child, the child shall be placed with the person entitled to custody of the child under the order; or

- (c) an agreement shall be entered into under section 25. 1975, c. 1, s. 16, *amended.*

(2) A child who has been detained pursuant to subsection 2 of section 21 or clause *b* of subsection 1 of section 22 in an observation and detention home established or designated under *The Provincial Courts Act* that has been designated as a place of safety, shall, as soon as is practicable after the commencement of the detention, be brought before the court and the court shall make an order, ^{Period of detention} ^{R.S.O. 1970. c. 369}

- (a) confirming the child's detention for a period or periods that shall not in total exceed thirty days; or

(b) discharging the child from the observation and detention home,

and upon completion of the period of detention or the discharge, as the case may be, the child shall be removed from the observation and detention home for transfer back into the care of the society. *New.*

Hearing
to be
held

28.—(1) Where a child who has been apprehended or produced before the court under section 21 or 22 is before the court, there shall be a hearing to determine whether or not the child is in need of protection, and before the court finds that the child is in need of protection, the court shall also determine the child's age, name, and, in the case of a child detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, the location where the child was taken into protection and, subject to section 44, the religious faith of the child. 1975, c. 1, s. 17 (1), *amended*.

Witnesses

(2) The court, or upon the request of any party to the proceedings, a judge or a justice of the peace, has the power of summoning any person and requiring that person to attend before the court to testify and to produce such records, writings, documents and things as may be requisite, and the court has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce records, writings, documents and things as is vested in any court in civil cases. R.S.O. 1970, c. 64, s. 25 (2); 1975, c. 1, s. 17 (2), *amended*.

Who may
be heard

(3) The court may hear any person with evidence relevant to the hearing including the child, a parent of the child, subject to subsection 9, a foster parent of the child, the local director of a society or any person appearing on behalf of any of them, any person authorized by the board of directors of the society on behalf of the society, the clerk of a municipality or any person authorized by the council of the municipality on behalf of the municipality, and a district director of the Ministry or any person authorized by the Minister on behalf of Ontario. R.S.O. 1970, c. 64, s. 25 (3); 1972, c. 1, s. 19 (3), *amended*.

Evidence
R.S.O. 1970,
c. 151

(4) Notwithstanding any privilege or protection afforded under *The Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report whether oral or written, including any transcript, exhibit or finding in a prior proceed-

ing whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.

(5) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. Affidavit evidence

(6) In determining the best interests of the child for the purposes of this Part, the court shall have regard to those considerations in subclauses i to viii of clause b of section 1 that are relevant in the circumstances. *New.* Determination of best interests of the child

(7) The court shall not proceed to hear or dispose of the matter until the court is satisfied that the parent or other person having actual custody of the child, including, where applicable, any foster parent who immediately prior to the hearing has been caring for the child on behalf of a society for a continuous period of more than six months and, subject to subsection 8, the child, has had reasonable notice of the hearing or that reasonable effort has been made in the opinion of the court to cause the parent, such other person or the child to be notified. 1975, c. 1, s. 17 (3), *amended.* Notice

(8) A child who is, Notice to child

(a) ten or more years of age is entitled to notice under subsection 7 unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsection 7 unless the court decides that the child is entitled to be present at the hearing under clause b of section 33.

(9) A foster parent who is given notice under subsection 7 is entitled to make representations to the court and to be represented by counsel at the hearing, but shall take no further part in the hearing without leave of the court. Foster parent at hearing

(10) The court's right to receive evidence in any hearing under this Part shall not be restricted by the content of any notice given or application made in writing with respect to the proceedings and the court may without requiring notice to be given, unless it considers further notice to be necessary in the circumstances, make an order at any stage in a proceedings amending such notice or application. *New.* Amendments

Court may
dispense
with notice

(11) Where, in the opinion of the court, prompt service of any notice required under subsection 7 of this section or subsection 6 of section 23 cannot be effected and any delay might endanger the health or safety of the child, the court may dispense with the requirements of those subsections. R.S.O. 1970, c. 64, s. 25 (7); 1975, c. 1, s. 17 (6), *amended*.

Limitation
where
notice
dispensed
with

(12) Where the requirements of subsection 7 have been dispensed with pursuant to subsection 11, the court shall not make an order committing the child as a ward of the Crown or make an order committing the child as a ward of a society for a period exceeding thirty days, except after holding a further hearing, and the requirements of subsection 7 apply to such further hearing. R.S.O. 1970, c. 64, s. 25 (8); 1975, c. 1, s. 17 (7), *amended*.

Custody
during
adjourn-
ment

(13) A court may from time to time adjourn a hearing but no such adjournment shall, subject to subsection 14 and subsection 1 of section 29, be for more than thirty clear days, and pending final disposition of the hearing,

(a) where a society shows cause why the child should remain or should be placed, as the case may be, in the temporary care and custody of the society, the court shall order that the child remain or be placed in the temporary care and custody of the society; or

(b) where sufficient cause has not been shown why the child should remain or be placed, as the case may be, in the temporary care and custody of a society, the court shall order that the child be returned to or remain in the care and custody of the parent or other person in whose charge the child was immediately prior to,

(i) the child's detention, or

(ii) the production of the child before the court by the parent or other person,

unless the court is satisfied that some other order for care and custody of the child should be made, in which case, the court may make such other order for the temporary care and custody of the child as the court considers advisable pending final disposition of the hearing, except an order placing the child in a training school established under *The Training Schools Act*, or placing the child in an observation and detention home established or designated

under *The Provincial Courts Act* that has not been designated under this Act as a place of safety. R.S.O. 1970, c. 64, s. 25 (10); 1973, c. 75, s. 1, *amended*.

(14) The court having regard to all the circumstances of the case and with the consent of the parties may adjourn a hearing under subsection 13 for a period longer than thirty days, and, where the court grants such longer period of adjournment, the order for adjournment shall contain the court's reasons for granting such longer period. Longer period of adjournment

(15) Where the court is satisfied that cause has been shown why a change in the arrangements for the care and custody of the child should be made, the court may vary or terminate any order for care and custody made under subsection 13. Variation or termination of order

(16) For the purpose of determining under subsection 13 or 15 whether a child shall remain or be placed in the temporary care and custody of a society, the court may receive and base its decision upon evidence that the court considers credible and trustworthy in the circumstances. *New.* Standard of proof

(17) The provisions of this section apply with necessary modifications to proceedings under subsections 1 and 4 of section 32, section 35, section 37 and subsections 1 and 2 of section 38. 1972, c. 109, s. 4 (2), *amended*. Application

29.—(1) Where a child has been found to be a child in need of protection pursuant to section 28, a court may order the child and any parent of the child or other person, except a foster parent caring for the child on behalf of a society, in whose charge the child has been or may be, to attend for an assessment before a person or persons specified in the order and who in the opinion of the court are qualified to perform medical, emotional, developmental, psychological, educational or social assessments and who have consented to perform the assessments and within a time specified therein, and the person or persons making the assessments shall report the results thereof in writing to the court within thirty days of the order or within such longer period of time as the court may direct. Order for assessment

(2) The court shall provide a copy of the report of the assessment to, Report

(a) subject to subsection 3, any person who is the subject of the assessment;

(b) counsel or the agent on the record for the child;

(c) a parent appearing at the hearing or the parent's counsel or agent on the record; and

(d) the society that is a party to the proceedings,

and the court shall at any time upon request order a copy of the report to be provided to a Director, and the court may at any time order a copy of the report to be provided to any other person for the purpose of the case as the court may direct.

Idem

(3) A child who is the subject of the assessment and who is,

(a) ten or more years of age shall be provided with a copy of the report unless the court is satisfied that the effect of the contents of all or any part of the report would be injurious to the emotional health of the child, in which case the court may withhold all or any part of the report from the child; or

(b) under ten years of age shall not be provided with a copy of the report pursuant to subsection 2, unless the court considers it reasonable in the circumstances that the child receive the report or any part thereof.

Idem

(4) The report of the assessment shall form part of the court record in the case but shall not be admissible in evidence for any purpose in any other proceedings except in proceedings,

(a) by way of appeal under section 43;

1972, c. 98

(b) under *The Coroners Act, 1972*; or

(c) referred to section 51,

without the consent of the person or persons who are the subject of the assessment.

Inference
from
refusal

(5) Where a person who has been ordered under subsection 1 to attend for an assessment refuses to attend or to undergo the assessment, the court may draw such inferences relating to the placement of the child as it thinks appropriate. *New.*

30.—(1) Where a court finds a child to be a child in need of protection pursuant to section 28, the court shall make the one of the following orders that the court considers to be in the best interests of the child, namely:

Order where
child in
need of
protection

1. That the child be placed with or returned to the child's parent or other person, subject to supervision by the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing, for a period of not less than six months and not more than twelve months as in the circumstances of the case the court considers advisable.
2. That the child be made a ward of and committed to the care and custody of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing, for such period, not exceeding twelve months, as in the circumstances of the case the court considers advisable.
3. That the child be made a ward of the Crown until the wardship is terminated under section 38 or expires under section 42 and that the child be committed to the care of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing. R.S.O. 1970, c. 64, s. 26; 1973, c. 75, s. 2, *amended*.

(2) Where a provincial judge has committed a child to the charge of a society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada), the child shall be deemed to be committed to the society under paragraph 2 of subsection 1,

Period of
committal

R.S.C. 1970,
c. J-3

- (a) where the order is for a fixed period that does not exceed twelve months, for the period specified in the order; or
- (b) where the order is for an indefinite period or exceeds twelve months, for twelve months.

(3) A provincial judge shall give reasonable notice to a society before committing a child to the charge of the society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada). 1975, c. 1, s. 18, *amended*.

Notice

(4) In making an order under paragraph 1 of subsection 1, the court may impose reasonable terms and conditions, relating to the method of supervision of the child,

Terms and
conditions

(a) upon the person with whom the child has been placed or returned, as the case may be;

(b) upon the supervising society;

(c) upon the child; and

(d) upon any other person where the person has been afforded an opportunity to be heard.

Determina-
tion of
order

(5) In determining which order to make under subsection 1, the court shall inquire of the parties whether any efforts have been made by a society or any other agency or person to assist the child while the child was in the care of his or her parent or other person and before the child came into the care of the society. *New.*

Payment
by parent

31.—(1) Subject to subsection 3, where a child is found to be a child in need of protection and,

(a) is committed to the care of a society; or

(b) is placed with a person other than the child's parent subject to supervision by a society,

the court may order a parent or the estate of a parent to pay the society such an amount and at such intervals as the court considers proper for each day the child is in the care or under the supervision, as the case may be, of the society.

Deter-
mination of
amount

(2) In determining the amount if any that shall be paid to the society under subsection 1, the court shall have regard to the following circumstances of the parent or the estate of the parent and of the child that the court considers relevant,

(a) the assets and means of the child and of the parent or the estate of the parent;

(b) the capacity of the child to provide for the child's own support;

(c) the capacity of the parent or the estate of the parent to provide support;

(d) the age and the physical and mental health of the child and of the parent;

(e) the mental, emotional and physical needs of the child;

(f) the legal obligation of the parent or the estate of the parent to provide support for any other person;

(g) the child's aptitude for and reasonable prospects of obtaining an education;

(h) any other legal right of the child to support other than out of public moneys.

(3) An order made under subsection 1 shall not extend beyond the date when the child attains the age of eighteen years. ^{Idem}

(4) A court may vary or rescind the order under subsection 1 where the circumstances of the child or the parent have changed. 1975, c. 1, s. 19 (1), *amended*. ^{Varying payments by parent}

(5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality on behalf of the society of the payments of the amounts required to be paid by the parent under subsection 1. R.S.O. 1970, c. 64, s. 27 (3). ^{Agreement to collect payments}

(6) An order made against a parent under subsection 1 may be enforced in the same manner as an order made under Part II of *The Family Law Reform Act, 1978*. R.S.O. 1970, c. 64, s. 27 (4), *amended*. ^{Enforcement of order 1978, c. 2}

32.—(1) Subject to subsections 6 and 7, where a child has been placed under the supervision of a society pursuant to an order made under paragraph 1 of subsection 1 of section 30, the society may at any time and shall, before the expiration of the period of supervision and upon giving notice to the child, the parent or any person having actual custody of the child, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify the variation or termination of any term or condition of the order relating to the method of supervision of the child or a further order under subsection 1 of section 30 and may, having regard to the best interests of the child, vary or terminate any term or condition in the order relating to the method of supervision of the child, terminate the order or make a further order under this Part. ^{Application to review supervision order}

(2) A society shall, as soon as is practicable, and within five days of removing a child from the parent or person with whom the child has been placed pursuant to an order under paragraph 1 of subsection 1 of section 30 apply to a court for a review of the child's status under subsection 1. ^{Time limit for application}

Jurisdiction
of court

(3) An application under subsection 1 or 4 may be heard by the court in the county or district in which the parent or other person with whom the child was placed pursuant to the order made under paragraph 1 of subsection 1 of section 30 resides at the time of the application.

Idem

(4) Where a child has been placed under the supervision of a society, pursuant to an order made under paragraph 1 of subsection 1 of section 30, a parent of the child, a person other than a parent with whom a child is placed or to whom a child is returned or the child where the child is twelve or more years of age may, after the expiration of six months from the making of the order or from the disposition of any previous application under this section for a review of the child's status, whichever is later, and upon giving notice to the society, apply to a court for a review of the child's status and,

(a) where the court is satisfied that the termination of the order or the variation or termination of any term or condition of the order relating to the method of supervision of the child is in the best interests of the child, the court may terminate the order or vary or terminate such term or condition of the order; or

(b) the court may make such further order under this Part as the court considers is in the best interests of the child. 1975, c. 1, s. 19 (2), *amended*.

Notice

(5) Subject to subsection 7, where a notice is given to the society under subsection 4,

(a) by a parent of the child, the society shall forthwith upon receipt of the notice cause notice of the application to be given to the child, to any other parent of the child, and where applicable to the person other than a parent with whom the child is placed or to whom the child is returned;

(b) by a person other than a parent, the society shall forthwith upon receipt of the notice cause notice of the application to be given to a parent of the child and the child; or

(c) by the child, the society shall forthwith upon receipt of the notice cause notice of the application to be given to a parent of the child and where applicable to the person other than a parent with

whom the child is placed or to whom the child is returned. *New.*

(6) Notwithstanding paragraph 1 of subsection 1 of section 30, an application under subsection 1 may be made by the society having jurisdiction in the area where the parent or other person with whom the child was placed resided immediately prior to the application being made and, where the court makes an order, that society shall be given supervision or committal of the child, as the case may be. 1975, c. 1, s. 19 (2), *amended.* Jurisdiction of society

(7) A child who is,

Notice of child

(a) ten or more years of age is entitled to notice under subsection 1, and where applicable under subsection 5, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsection 1, and where applicable under subsection 5, unless the court decides that the child is entitled to be present at the hearing under clause b of section 33. *New.*

33. The court shall, in every proceeding under this Part, make an order directing whether any child who is the subject of the proceedings shall be excluded from or be present at the hearing or any part thereof and in making an order under this section there shall be a presumption that, Presence of child at hearing

(a) a child ten or more years of age is entitled to be present at any hearing that is part of the proceedings unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child; or

(b) a child under ten years of age shall not be present at any hearing that is part of the proceedings unless the court is satisfied that the hearing or any part thereof would be understandable to the child and not be injurious to the emotional health of the child. *New.*

34. Notwithstanding section 129 of *The Judicature Act* and with the leave of the court hearing an application under this Part, any step may be taken in the application, the Proceedings at any time or on a holiday
R.S.O. 1970, c. 228

hearing may be held and the order may be made and performed at any time of any day, including a holiday. R.S.O. 1970, c. 64, s. 28.

Access to
child

35.—(1) Subject to subsections 2, 3, 5 and 6 and subsection 7 of section 38,

- (a) a parent of a child where the child is in the care or custody of a society or with whom the child is placed or to whom the child is returned subject to supervision by a society, upon giving notice to the society;
- (b) a person other than a parent, with whom a child is placed or to whom a child is returned subject to supervision by a society, upon giving notice to the society;
- (c) a child twelve or more years of age and who is in the care and custody or under the supervision of a society, upon giving notice to the society;
- (d) a society having care and custody or supervision of a child upon giving notice to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to any parent of the child, to any person with whom the child is placed or to whom the child is returned subject to supervision of a society, as the case may be, and to the child,

may, at any time after the commencement of proceedings under this Part respecting the child and whether before or after the making of an order under this Part, apply to a court for an order regarding the right of access to the child.

Idem

(2) No order regarding the right of access to a person over the age of sixteen years shall be made under subsection 4.

Idem

(3) No application under subsection 1 shall be made by a person referred to in clause *a*, *b* or *c* of that subsection before the expiration of six months from the date of any previous application under that subsection by such person. *New.*

Idem

(4) Upon an application therefor in accordance with subsection 1, or at the time of making any other order under this Part, a court, having regard to the best interests of the child shall consider whether or not an order regarding

the right of access to the child shall be made, altered, varied or discharged and may make such order as the court considers proper regarding the right of access to the child by any person or may alter, vary or discharge, any order so made. R.S.O. 1970, c. 64, s. 29, *amended*.

(5) A child who is,

Notice
may be
dispensed
with

- (a) ten or more years of age is entitled to notice under subsection 1 and where applicable under subsection 6, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1 and where applicable under subsection 6, unless the court decides that the child is entitled to be present at the hearing under clause b of section 33.



(6) Subject to subsection 5, where a notice is given to the society under, Notice

- (a) clause a of subsection 1, the society shall forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to the child and to any other parent of the child; or
- (b) clause b of subsection 1, the society shall forthwith upon receipt of the notice cause notice of the application to be given to the parent of the child and to the child; or
- (c) clause c of subsection 1, the society shall forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to a parent of the child or to any other person with whom the child is placed or to whom the child is returned subject to supervision by a society, as the case may be. *New.*

36. The reasons for any decision made by a court under this Part may be oral or written and shall include,

Contents
of
decision

- (a) a statement of the evidence upon which the decision of the court is based;
- (b) in the case of a decision granting or renewing an order under paragraph 1 of subsection 1 of section 30 or varying any term or condition of the order, a statement of any terms and conditions imposed by the court;
- (c) in the case of a decision granting or refusing,
 - (i) an order under paragraph 1, 2 or 3 of subsection 1 of section 30,
 - (ii) an order for the renewal or termination of any existing order under paragraph 1 or 2 of subsection 1 of section 30 or for the termination of any existing order under paragraph 3 of subsection 1 of section 30, or
 - (iii) an order varying any term or condition of any existing order under paragraph 1 of subsection 1 of section 30,

a statement of the plan proposed by a society or of a plan, if any, proposed by a parent of the child to meet the best interests of the child, but nothing in this section shall require the court to identify in the statement any person caring for the child during the period of any proposed placement or identify any place where the care is to be provided; and

- (d) a statement of the reasons for the decision, and, in the case of an order authorizing the removal of a child from or refusing to return the child to the parent or person in whose charge the child was immediately prior to the child's apprehension by a society, the statement shall include reasons why the child cannot be adequately protected without such removal or without the refusal of such return, as the case may be. R.S.O. 1970, c. 64, s. 30, *amended*.

Application
to review
society
wardship

87.—(1) Subject to subsection 4, where a child has been committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 30, the society may at any time and shall, before the expiration of the period of wardship, other than under section 42, and upon

giving notice to the child, the parent of the child and any foster parent who immediately prior to the application has been caring for the child on behalf of the society for a continuous period of more than six months, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify a further order under subsection 1 of section 30 and may, having regard to the best interests of the child, terminate the order or make a further order under this Part but in no case shall an order be made that results in the child being in the care and custody of a society,

- (a) as a ward of the society;
- (b) pursuant to an agreement under section 25; or
- (c) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c*, for a continuous period of more than twenty-four months. R.S.O. 1970, c. 64, s. 31; 1973, c. 75, s. 4, *amended*.

(2) Subject to subsections 4 and 5, where a child has been ^{Idem} committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 30,

- (a) a parent of the child after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to the society having the care of the child,

may apply to a court for a review of the child's status and,

- (c) **where the court is satisfied that the termination is in the best interests of the child, the court may terminate the order;** or
- (d) the court may make such further order under this Part as the court considers necessary in the

best interests of the child, but in no case shall an order be made that results in the child being in the care and custody of a society,

- (i) as a ward of the society,
- (ii) pursuant to an agreement under section 25, or
- (iii) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in subclauses i, ii and iii, for a continuous period of more than twenty-four months. 1975, c. 1, s. 20, *amended*.

Extension
of limitation
period

(3) Notwithstanding subsections 1 and 2, where, on an application under subsection 1 or 2 for a review of the child's status, the hearing is adjourned to a date beyond the twenty-four month period prescribed in those subsections, the order to be reviewed shall not expire at the end of such period but shall be extended until an order pursuant to subsection 1 or 2 has been made. *New*.

Notice may
be
dispensed
with

(4) A child who is,

(a) ten or more years of age is entitled to notice under subsection 1 and where applicable under subsection 5, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsection 1 and where applicable under subsection 5, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33. *New*.



Notice

(5) Subject to subsection 4, where a notice is given to the society under,

(a) clause *a* of subsection 2, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to the child and to any other parent of the child; or

- (b) clause *b* of subsection 2, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to a parent of the child and to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months.

(6) Notwithstanding subsections 13 and 15 of section 28, ^{Custody of child} where an application is made under this section for a review of the child's status, the child shall remain in the care and custody of the society having care and custody of the child at the time the application was made pending final disposition of the application by the court unless cause is shown why a change in the arrangements for the care and custody of the child should be made. *New.*

38.—(1) Subject to subsections 3, 4, 5 and 6, where a child ^{Application to review Crown wardship} has been committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 30,

- (a) a parent of the child after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to a Director and the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to the society having the care of the child,

may apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 7, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 30, that the court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 35. *New.*

(2) Subject to subsections 3, 4 and 5, where a child has been ^{Idem} committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 30, the society having the care of the child upon giving notice to a

Director, any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, any parent of the child and the child, may, at any time during the period of the Crown wardship, apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 7, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 30, that the court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 35.

Notice not
required

(3) A notice is not required to be given under subsections 1 and 2 to a parent of the child where the child has attained the age of sixteen years. 1975, c. 1, s. 21, *amended*.

Notice may
be dispensed
with

(4) A child who is,

(a) ten or more years of age is entitled to notice under subsections 1 and 2 and where applicable under subsection 6, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsections 1 and 2 and where applicable under subsection 6, unless the court decides that the child is entitled to be present at the hearing under clause b of section 33. *New*.

Termination
of access

(5) Before making an order under subsection 1 or 2 terminating an order for access to the child made pursuant to section 35, the court shall consider whether the benefit to the child of any plan proposed for the child, including plans for seeking an adoption placement for the child, outweighs the benefit to the child of maintaining the access rights.

Notice

(6) Subject to subsection 4, where a notice is given to the society under,

(a) clause a of subsection 1, the society shall, forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more

than six months, to the child and to any other parent of the child; or

- (b) clause *b* of subsection 1, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to a Director, to a parent of the child and to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months.
New.

(7) Subject to sections 39 and 42, where a child has been committed as a ward of the Crown, the order made under paragraph 3 of subsection 1 of section 30 shall remain in effect and the Crown wardship shall, subject to an adoption order being made with respect to the child under Part III, not be terminated by, reviewed in or otherwise brought before the court and an order of access to the child shall not be made or applied for where the child has been placed for the purpose of adoption in the home of a person who has been approved by a society or by a Director as a suitable person to adopt the child and while the child is residing in that person's home.

Crown
wardship to
remain in
effect

(8) The placement for the purpose of adoption of the child referred to in subsection 7 shall not be made until any appeal under section 43, from,

When
placement
for adoption
may be
made

- (a) the decision granting an order of Crown wardship;
or
(b) any decision granting or refusing an order under subsection 1 or 2,

has finally been disposed of, or until,

- (c) the period of time for commencing an appeal under section 43 from a decision referred to under clause *a* or *b* has expired; or
(d) any outstanding order of access to the child under this Act has been terminated,

whichever is the later. R.S.O. 1970, c. 64, s. 32 (2, 3),
amended.

(9) Notwithstanding subsections 13 and 15 of section 28, where an application is made under this section for a review of the child's status, the child shall remain in the care and custody of the society having care and custody of the child at the time the application was made pending final disposition of the application by the court unless cause is

Custody of
child

shown why a change in the arrangements for the care and custody of the child should be made. *New.*

Review
by
Director

39. A Director or any person authorized by the Director shall, during each calendar year beginning in the year 1979, review the status of each child who during that calendar year and, in the absence of any further order by the court has been or will continue to be a Crown ward for a continuous period of twenty-four months from the date of the order of Crown wardship or from the last review under this subsection, whichever is later, and the Director may after any such review direct the society having care of the child to make an application pursuant to subsection 2 of section 38 to a court for a review of the child's status. *New.*

Duties re
Crown wards

40.—(1) The Crown has and shall assume all the rights and responsibilities of a legal guardian of each child who is made a ward of the Crown for the purpose of the child's care, custody and control, and the powers, duties and obligations of the Crown in respect of the child other than the powers, duties and obligations assigned to a Director by this Act shall be exercised and discharged by the society having the care of the child.

Transfer of
Crown ward

(2) A Director may direct that a Crown ward be transferred to the care of any other society or institution designated by the Director. R.S.O. 1970, c. 64, s. 33, *amended.*

Society
to be
legal
guardian

41. Each society has and shall assume all the rights and responsibilities of a legal guardian of every child who is committed as a ward of the society for the purpose of their care, custody and control. R.S.O. 1970, c. 64, s. 34, *amended.*

Expiration
of
wardship

42. Every order under this Part shall be deemed to expire with the marriage of the child who is the subject of the order or when the child attains the age of eighteen years, but where a wardship expires as a result of a Crown ward attaining the age of eighteen years, a society may, with the approval of a Director, continue to provide care and maintenance for the former Crown ward if the former Crown ward,

(a) is enrolled as a full-time student at an educational institution; or

(b) is mentally or physically incapacitated,

for any period of time after the expiration of the wardship that does not extend beyond the date when the former Crown ward attains the age of twenty-one years. 1972, c. 109, s. 5 (1), *amended.*

43.—(1) A decision granting or refusing an order of a court under this Part except a decision made under subsection 1 of section 29 in respect of a child may be appealed to the county or district court of the county or district in which the decision was made. 1975, c. 1, s. 22, *amended*.

Appeal to
county
court

(2) Execution of the decision being appealed shall be stayed for ten days next following the service of the notice of appeal upon the court that made the decision being appealed, and, where the child is in the custody of the society at the time the decision being appealed is made, the child shall remain in the care and custody of the society,

Decision
stayed

- (a) during the ten days that execution of the decision is stayed; or
- (b) until the county or district court of the county or district in which the decision was made makes an order for temporary care and custody of the child pursuant to subsection 4,

whichever is earlier.

(3) Notwithstanding subsection 2, where the decision being appealed authorizes the child to remain in the care and custody of the society, the child shall, subject to subsection 4, remain in the care and custody of the society after the period of ten days referred to in subsection 2, pending final disposition of the appeal. *New*.

Child to
remain with
society

(4) Where the county or district court of the county or district in which the decision being appealed was made is satisfied that an order for care and custody of the child is in the best interests of the child, the county or district court may make such order for the temporary care and custody of the child that the county or district court considers advisable pending final disposition of any appeal made under this section, except an order placing the child in a training school established under *The Training Schools Act* or placing the child in an observation and detention home established or designated under *The Provincial Courts Act* that has not been designated under this Act as a place of safety, and the county or district court may, upon application by any party before the final disposition of the appeal and where the county or district court is satisfied that it is in the best interests of the child, vary or terminate the order or make a further such order.

Temporary
order of
court

R.S.O. 1970,
cc. 467, 369

(5) Where, pursuant to the final disposition of the appeal, the child is committed as a ward of the society, any period

Period of
temporary
wardship

of temporary care and custody ordered under subsection 4 shall be included in determining the twenty-four month period prescribed in subsection 1 or 2 of section 37.

Extension of
of
limitation
period

(6) Notwithstanding subsection 5 and subsections 1 and 2 of section 37, where on an appeal under this section from a decision granting an order under paragraph 2 of subsection 1 of section 30 or an order for the renewal or termination of an order under that paragraph, the final disposition of the appeal extends beyond the twenty-four month period prescribed in subsection 1 or 2 of section 37, the order being appealed shall not expire at the end of such period but shall be extended until a final disposition is made of the appeal.

Extension of
time for
appeal

(7) No extension of the time for the commencement of the appeal shall be granted after the child has been placed for adoption. *New.*

New
evidence

(8) On the hearing of the appeal and with leave of the county or district court hearing the appeal, further evidence relating to matters both preceding and subsequent to the making of the decision being appealed, may be received either by affidavit, oral examination or as may be directed by the county or district court. 1975, c. 1, s. 22, *amended.*

Pre-
sumption
as to
religious
faith

44.—(1) Subject to subsection 2, for the purposes of this section, a child shall be deemed to have the same religious faith as the child's father unless it is shown that an agreement has been entered into in writing, signed by the child's parents, that the child be brought up in the same religious faith as the child's mother.

Child
born
outside
marriage

(2) For the purposes of this section, a child born outside marriage shall be deemed to have the religious faith of the child's mother.

Where
established
faith not
that of
parent

(3) Where a child is being raised in a religious faith other than the child's religious faith as determined under subsection 1 or 2 or where the child's religious faith cannot be readily determined under subsection 1 or 2, the court may determine the child to have such religious faith, if any, for the purposes of this section, as the court considers proper in the circumstances.

Religious
faith of
child

(4) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not

be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of the child's own religious faith, if any.

(5) Subsection 4 does not apply to the commitment of a child to the care of a society in a municipality in which there ^{Where only one society} is only one society.

(6) Where a society,

(a) is unable to place a child in a suitable foster home ^{Application to waive subs. 4} within a reasonable time because of the operation of subsections 1 to 4; and

(b) would be able to place the child in a suitable foster home but for the operation of subsections 1 to 4,

the society or a Director may apply to the court who may order that subsection 4 does not apply to the child in respect of the placement.

(7) Notwithstanding anything in this section, the court ^{Child's wishes to be consulted} may have regard to the wishes of the child in determining what order ought to be made as to the child's religious faith. R.S.O. 1970, c. 64, s. 37, *amended*.

45.—(1) A child who is a ward of the Crown or of a society may be placed by the society for any period of time ^{Society may place ward} in a foster home or other suitable place according to the needs of the child and the society shall ensure that the child so placed receives an education in accordance with the laws of Ontario and in keeping with the child's intellectual capacity and that provision is made for the child's occupational training and total development such as a good parent would provide for his or her own child.

(2) A child who is a ward of the Crown or of a society and who has been placed in a foster home or other suitable place ^{Removal of ward of society} may at any time be removed by the society when, in the opinion of a Director or the local director, the welfare of the child so requires.

(3) Where a child who is a ward of the Crown is placed ^{Adoption of ward} in a foster home and, in the opinion of the local director with the approval of a Director, it is in the best interests of the child to place the child for adoption, the foster parents shall not be denied the opportunity of making application to adopt the child if they so desire. R.S.O. 1970, c. 64, s. 38, *amended*.


Inter-
ference
with wards,
etc.


46. No person shall,

- (a) induce or attempt to induce a child to leave the care of a person or persons with whom the child is lawfully placed; or
- (b) detain or harbour a child who is lawfully in the care of a person or persons, after a demand is made by a person authorized to require the child to be delivered up; or
- (c) subject to section 35, visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or otherwise interfere with a child who is in the lawful care or custody of a society; or
- (d) subject to section 35, visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a foster parent of a child where the child is in the lawful care or custody of a society,

without the consent in writing of the society having the care, custody or supervision of the child. R.S.O. 1970, c. 64, s. 39, *amended*.

Inter-
pre-
tation


 **47.**—(1) For the purposes of this section and sections 49, 50, 51 and 52, “abuse” means a condition of,

- (a) physical harm;
- (b) malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death; or
- (c) sexual molestation. *New.* 

Desertion,
abuse, etc.,
of child

(2) No person having the care, custody, control or charge of a child shall abandon or desert the child or inflict abuse upon the child or permit the child to suffer abuse.


Further
proceedings
as to child

 (3) A court may, in connection with any case arising under subsection 2, hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. R.S.O. 1970, c. 64, s. 40, *amended*.

Leaving
child

48.—(1) No person having the care, custody, control or charge of a child shall leave the child without making reasonable provision, in the circumstances, for the supervision, care or safety of the child.


(2) A court may in connection with any case arising under subsection 1 hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. R.S.O. 1970, c. 64, s. 40, *amended*. Further proceedings as to child

(3) Where a person is charged with contravening subsection 1, the onus of establishing that reasonable provision was made in the circumstances for the supervision, care or safety of the child where the child is under the age of ten years, rests with the person charged. *New*. 

49.—(1) Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society. R.S.O. 1970, c. 64, s. 41 (1), *amended*. Reporting abuse of child

(2) Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has or has had charge of the child shall forthwith report the suspected abuse to a society. *New*. Duty of professional to report

(3) This section applies notwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection 1 or 2 unless the giving of the information is done maliciously or without reasonable grounds to suspect that the information is true. R.S.O. 1970, c. 64, s. 41 (2), *amended*. Privilege abolished

 (4) Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client. *New*. Solicitor and client privilege

50.—(1) Subject to the provisions of subsection 4 with respect to section 26a of *The Mental Health Act* and notwithstanding the provisions of any other Act, where the applicant satisfies the court, Access to records, etc.
R.S.O. 1970.
c. 269

- (a) that there are reasonable and probable grounds to believe that there are records, writings or documents at any place that are relevant to an investigation to determine whether abuse has been or is likely to be inflicted on a child; and
- (b) that a request by a Director, a local director of a society or a person authorized by the Director or by the local director to inspect such records,

writings or documents has been refused by the custodian of the records, writings or documents,

the court upon application by the Director or the society, as the case may be, and upon notice of the application being given to the custodian of the records, writings or documents, may, subject to subsection 2, make an order for the production by the custodian thereof of any of the records, writings or documents or any part or parts thereof that the court considers are relevant to an investigation to determine whether the abuse has been or is likely to be inflicted on the child, to the Director or the local director or person authorized by the Director or the local director, as the case may be, and the Director, local director or the person may inspect and extract information from such records, writings or documents or part or parts thereof that are designated in the order and reproduce such copies therefrom as the Director, local director or the person, as the case may be, considers necessary.

Non-disclosure of records, etc.

(2) The records, writings or documents or any part or parts thereof that are produced or disclosed to the court in the course of a hearing held to determine whether an order should be made under subsection 1 for the production of the records, writings or documents or any part or parts thereof, shall not be disclosed to any person except pursuant to and in accordance with any order made following the hearing under subsection 1.

Idem

(3) No person who obtains information pursuant to an order made under subsection 1 shall disclose or transmit or permit the disclosure or transmission of the information except for the purpose of the investigation to determine whether the child is in need of protection or for giving evidence in proceedings under this Part.

Matters to be considered by court
R.S.O. 1970, c. 269

(4) In determining whether to make an order under subsection 1 for the production of a clinical record within the meaning of section 26a of *The Mental Health Act*, the court shall give equal consideration to the matters to be considered under subsection 7 of section 26a of that Act and the health and safety of the child. *New.*

Action for recovery on behalf of child

51. Where the Official Guardian, or in the case of a child in the care of a society under paragraph 2 or 3 of subsection 1 of section 30, the society, is of the opinion that a child has a cause of action against a person or persons or other right of recovery by reason of the infliction of abuse upon the child and that the institution of proceedings to recover damages or other compensation would be in the best interests of the

child, the Official Guardian or the society, as the case may be, may institute and conduct such proceedings on behalf of the child in respect of the abuse suffered by the child.

52.—(1) In this section,

Interpretation

(a) “Director” means an employee of the Ministry appointed by the Minister for the purposes of this section;

(b) “registered person” means a person named in or otherwise identifiable from the register established under subsection 3, but does not include the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 who are not themselves the subject of the report.

(2) Every society that receives information under section 49 concerning the abuse of a child, including a child in the care of a society, shall forthwith, after the information is verified in the manner determined by the Director, report the information to the Director in the prescribed form, and no action or other proceeding for damages shall be instituted against any officer or employee of a society for any act done in good faith in the execution or intended execution of any duty imposed on the society under this subsection or for any alleged neglect or default in good faith of such duty.

Society to report information concerning abuse

(3) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information received by societies under section 49 concerning the abuse of children, but the register shall not contain any information that has the effect of identifying the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 unless such person or persons are themselves the subject of the report.

Register

(4) Subject to subsections 5 to 10 and notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the register established under subsection 3.

Information confidential

(5) A coroner, a legally qualified medical practitioner or police officer authorized in writing and directed by a coroner for the purposes of an investigation or inquest under *The Coroners Act, 1972* and the Official Guardian or a person duly authorized as the agent of the Official Guardian may inspect or remove the information maintained in the register established under subsection 3 and may disclose or transmit

Exceptions

1972, c. 98

that information only in accordance with the authority vested in the person and in the case of the Official Guardian or his duly authorized agent only for the purposes of section 51.

Idem

(6) The Director and the following persons with the approval of the Director, and subject to such terms and conditions as the Director may impose, may inspect or remove or permit the inspection or removal of the information maintained in the register and may disclose or transmit or permit the disclosure or transmission of that information to any person referred to in subsection 5 or to any other person referred to in this subsection:

1. A person who is on the staff of,
 - i. the Ministry,
 - ii. a society, or
 - iii. a child protection agency recognized by a jurisdiction outside Ontario.
2. A person who is or may be providing services or treatment to a registered person.

Idem

(7) A person who has the written approval of the Director and who is engaged in *bona fide* research may inspect the information referred to in subsection 4 but shall not use or communicate the information for a purpose other than research, academic pursuits or the compilation of statistical data and shall not communicate any information that has the effect of identifying any person named in the register.

Idem

(8) A registered person or the registered person's agent may inspect the information maintained in the register, but shall not inspect information that refers to persons other than the registered person.

Idem

(9) A legally qualified medical practitioner who is approved by the Director may inspect information referred to in subsection 4 that is approved by the Director.

Idem

(10) The Director or a person approved by the Director who is on the staff of the Ministry may expunge a name from the register or otherwise amend the register pursuant to a decision of the Director or as prescribed by the regulations.

Register inadmissible

(11) The register established under subsection 3 is inadmissible in evidence for any purpose in any proceedings, except,

- (a) to prove compliance or non-compliance with any of the provisions of this section;
- (b) in an appeal made under subsection 19;
- (c) in proceedings under *The Coroners Act, 1972*; or 1972, c. 98
- (d) in proceedings referred to in section 51.

(12) Where an entry is made in the register, the Director ^{Notice} shall forthwith cause notice to be given in writing to each registered person included in the entry who is alleged or suspected to have inflicted abuse upon a child,

- (a) that the person's name has been recorded in the register or that the person is otherwise identifiable from the register;
- (b) that the person or the person's agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) that the person is entitled to request the Director to expunge the person's name from the register or to have the register otherwise amended.

(13) A person to whom a notice is given under subsection 12 may request the Director to expunge from the register the registered person's name referred to in the notice or to otherwise amend the register. ^{Request for a hearing}

(14) Where the Director receives a request under subsection 13, the Director shall hold a hearing before deciding to refuse the request to expunge the registered person's name from the register or to refuse the request to otherwise amend the register, and the provisions of *The Statutory Powers Procedure Act, 1971* apply, with necessary modifications, to the hearing. ^{Hearing} 1971, c. 47

(15) A registered person to whom notice is given under subsection 12, the society that received the information concerning the registered person under subsection 1 or 2 of section 49 and such other persons as the Director may specify are parties to the hearing. ^{Parties}

(16) The Director shall cause notice of the hearing to be given to the parties to the hearing at least ten days before the hearing is held. ^{Notice}

(17) Where the Director, after holding a hearing, determines that the information in the register with respect to a ^{Decision of Director}

registered person should not be in the register or that the information is in error, the Director shall, subject to subsections 19 and 20, cause the registered person's name to be expunged from the register or otherwise cause the register to be amended, as the case may be, and the Director may order that a society's records be amended to reflect the Director's decision.

Delegation of
authority
to hold a
hearing

(18) The Director may authorize any other person to hold a hearing required under subsection 14 and where such person is authorized by the Director to hold the hearing, the person shall exercise the powers and duties of the Director under subsections 14 to 17.

Appeal

(19) Any person who is a party to the hearing may appeal the decision made pursuant to subsection 17 to the Divisional Court.

Decision of
Divisional
Court

(20) The Divisional Court may affirm the decision appealed from or may rescind the decision and refer the matter back to the Director or the person authorized by the Director under subsection 18, as the case may be, to be disposed of in accordance with such directions as the Divisional Court considers proper under this section, and the Director or the person authorized by the Director shall give effect to any direction given by the Divisional Court under this subsection.

Record of
proceedings
at hearing
inadmissible

(21) The record of proceedings in any hearing held under subsection 14 or in any appeal under subsections 19 and 20 is inadmissible in evidence in any other proceeding for any purpose except proceedings under clause c and subclause iv of clause f of subsection 1 of section 93. *New.*

Causing
child
to beg,
perform,
etc.

53.—(1) No person shall,

- (a) cause or procure a child to be in any place to which the public has access for the purpose of begging or receiving charity or of inducing the giving of charity whether under the pretence of singing, playing, performing, offering anything for sale or otherwise; or
- (b) subject to subsection 2, cause or procure a child to be in any place to which the public has access for the purpose of singing, playing or performing for profit or offering anything for sale between 9 o'clock in the afternoon of any day and 6 o'clock in the morning of the following day; or
- (c) subject to subsection 2, cause or procure a child to be at any time for the purpose of singing, play-

ing or performing for profit or offering anything for sale in any circus, theatre or other place of public entertainment to which the public is admitted by payment.

(2) In the case of an entertainment or series of entertainments to take place in premises used for public entertainment or in a circus, theatre or other place of public amusement, where it is shown that provision has been made to ensure the health and proper treatment of a child proposed to be employed thereat, the head of the council of the municipality where the entertainment is to take place may, with the approval of a society having jurisdiction where the entertainment is to take place, grant a licence for such time and during such hours of the day and subject to such restrictions and conditions as the head of the council thinks fit for any child who in the opinion of the head of the council is a fit and proper person to take part in such entertainment or series of entertainments, and the licence may at any time be varied, added to or revoked by the head of the council with the approval of the society.

Licence for
child to
perform in
public

(3) The head of the council may assign to the chief of police of the municipality or to some other person the duty of ensuring that the restrictions and conditions of any licence granted under subsection 2 are duly complied with, and the chief of police or such person, as the case may be, may enter, inspect and examine any place at which the employment of a child is for the time being licensed. R.S.O. 1970, c. 64, s. 42, *amended*.

Officer to
supervise
licence

54.—(1) Subject to subsection 2 of section 53, no person under sixteen years of age shall engage in any trade or occupation in a place to which the public has access between the hours of 9 o'clock in the afternoon and 6 o'clock in the morning of the following day.

Person under
sixteen in
public place

(2) No person under sixteen years of age shall loiter in any place to which the public has access between the hours of 10 o'clock in the afternoon and 6 o'clock in the morning of the following day or be in any place of public resort or entertainment during such hours unless accompanied by the person's parent or an adult appointed by the parent or in the case of a child in the lawful care or custody of a society, an adult appointed by the society to accompany that person.

Person
under
sixteen
loitering
in public
place
at night

(3) A person found contravening any provision of this section may be warned by a police officer, and, if the warning is not regarded or if, after the warning, the person is again found con-

Warning

travelling any provision of this section, the person may be taken by the police officer to the person's home or to a place of safety and where the person is taken to a place of safety, the person shall be brought before a court as if the person had been apprehended pursuant to section 21 or 22. R.S.O. 1970, c. 64, s. 43 (2-5), *amended*.

Presumption
as to
age of
child

55. Where a person is charged with an offence under this Part in respect of a child who is alleged to be under a specified age and the child appears to the court to be under that age, the child shall for the purposes of this Part be deemed to be under that age unless the contrary is proved. R.S.O. 1970, c. 64, s. 44.

Separate
place of
detention

56.—(1) A child who is charged with an offence or brought before a court under this Part shall not, before the child's trial or hearing, be confined in a place used for persons charged with crime. R.S.O. 1970, c. 64, s. 45 (1), *amended*.

Idem

(2) Provision shall be made for the separate detention of every such child prior to the child's trial or hearing by arrangement with a person or society willing to undertake the responsibility of such detention on such terms as are agreed upon, or by providing suitable premises entirely distinct and separated from the ordinary lock-up or correctional institution. R.S.O. 1970, c. 64, s. 45 (2); 1975, c. 1, s. 24, *amended*.

Idem

(3) A child lawfully in custody shall not be placed or allowed to remain in the company of adult prisoners. R.S.O. 1970, c. 64, s. 4 (3).

Place of
hearing

57.—(1) Where a hearing is held under this Part, except a hearing under section 52, whether upon an application or by way of trial or appeal, the hearing shall be held in premises maintained specifically for the purpose or in the private office of the judicial officer holding the hearing or in other suitable premises, but the hearing shall not be held in premises ordinarily used for hearings in criminal proceedings.

Exclusion
of
persons
from
hearing

(2) Where a hearing is held under this Part, whether upon an application or by way of trial or appeal, all persons shall be excluded from the hearing unless the judicial officer holding the hearing having regard to,



(a) the wishes and interests of the parties; and

(b) whether or not the presence of others at the hearing would be injurious to the emotional health of any child who is present at the hearing,

otherwise directs.

(3) Notwithstanding subsection 2,

Idem

- (a) a person acting as prosecutor in the proceedings and an agent of the Attorney General and of a Director; and
- (b) subject to section 33, a child who is a party to the proceedings, the child's parents, a representative of a society, a person acting on behalf of the child, a person acting on behalf of the society, a person acting on behalf of the child's parents and any other person entitled to notice of the hearing,

may be present at a hearing held under this Part.

(4) Notwithstanding subsection 2 and subject to subsection 5, representatives of the press, radio and television media not exceeding two in number as agreed upon by all such representatives who present themselves, may be present at a hearing under this Part, except a hearing under section 52, but the judicial officer holding the hearing may exclude any or all such representatives from all or any part of the hearing or may prohibit the reporting of all or any part of the case by such representatives who are present at the hearing where the judicial officer is of the opinion that the presence of the representative or representatives, as the case may be, at the hearing or the reporting would be injurious to the emotional health of any child before the court and the judicial officer shall give reasons for the exclusion.

(5) Where the representatives referred to in subsection 4 who are entitled to be present at the hearing are unable to agree as to who shall be present at the hearing, the judicial officer holding the hearing may designate those representatives who are entitled to be present.

(6) The presence at the hearing of more than two representatives of the press, radio or television media may be allowed by the judicial officer holding the hearing.

(7) Where a hearing is held under this Part, whether upon an application or by way of a trial or appeal, no person shall publish or make public in respect of the proceedings any information that has the effect of identifying,

- (a) any child or a parent or foster parent of the child or a member of the child's family present at the proceedings whether as a party, witness or otherwise; and

- (b) any person charged with an offence in the proceedings. R.S.O. 1970, c. 64, s. 46, *amended*.

Effect of
order of
court in
other
jurisdiction

58. Where, an order or orders are made by a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof that is prescribed in the regulations and such order or orders do not effect an adoption of the child according to the law of the jurisdiction where the order or orders were made, but the rights and responsibilities of guardianship in respect of a child have been legally vested by such order or orders in any person, organization, province, state or country or a legal representative of any of them, the order or orders so made shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

PART III

ADOPTION

Interpre-
tation

59.—(1) In this Part and Part IV,

(a) “adoption agency” means a corporation without share capital having objects of a charitable nature,

R.S.O. 1970,
c. 89

(i) to which Part III of *The Corporations Act* applies, or

(ii) that is incorporated under a general or special Act of the Parliament of Canada,

and that places children under eighteen years of age for adoption and includes a society;

(b) “licence” means a licence issued under this Act;

(c) “relative of the child” means a grandparent, uncle or aunt of the child, whether the relationship is of whole blood, half blood or by marriage, and notwithstanding that the relationship is traced through or to a person born outside marriage or that the relationship depends on the adoption of any person. R.S.O. 1970, c. 64, s. 69, *amended*.

Idem

(2) In this Part, “child” means a person whether under eighteen years of age or eighteen or more years of age.

Licence
required

60.—(1) No person other than a society shall establish, operate or maintain an adoption agency except under the authority of a licence issued by a Director under this Act.

(2) Subject to section 61, any person who is a corporation without share capital having objects of a charitable nature, ^{Issuance of licence}



(a) to which Part III of *The Corporations Act* applies; ^{R.S.O. 1970, c. 89}
or

(b) that is incorporated under a general or special Act of the Parliament of Canada,

and who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain an adoption agency and pays the prescribed fee is entitled to be issued a licence by a Director subject to such terms and conditions as the Director may prescribe.

(3) Subject to section 61, a Director shall renew a licence ^{Renewal of licence} of an adoption agency on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee, and the renewal shall be subject to such terms and conditions as the Director may prescribe.

(4) Subject to section 61, where an applicant under subsection 2 or 3, as the case may be, for a licence or a ^{Provisional licence} renewal of a licence does not meet all the requirements for the issuance of a licence or renewal thereof and requires time to meet such requirements, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for such period or periods as the Director considers necessary to afford the applicant an opportunity to meet the requirements.

 (5) The Director may, subject to such terms and conditions as the Director may prescribe, issue a licence to a person other than an adoption agency for the placement of a child under eighteen years of age with another person for the purpose of adoption.  ^{Licence to person other than adoption agency}



(6) A licence is not transferable. ^{Not transferable}

(7) A licensee that is a corporation shall notify a Director in writing within fifteen days of any change in the officers or directors of the corporation. ^{Notice of change} *New.*

61.—(1) Subject to section 62, a Director may refuse to issue a licence where in the Director's opinion, ^{Grounds for refusal}

(a) any of the officers, directors or employees of the applicant are not competent to place children under eighteen years of age for adoption in a responsible

manner in accordance with this Act and the regulations;

 (b) an applicant for a licence under subsection 5 of section 60 who is not a corporation or any employee of the applicant is not competent to place a child under eighteen years of age for adoption in a responsible manner in accordance with this Act and the regulations; or 

(c) the past conduct of any of the officers, directors or employees of the applicant affords reasonable grounds for belief that any of them will not operate an adoption agency in accordance with this Act and the regulations.


Revocation
or refusal
to renew

(2) Subject to section 62, a Director may refuse to renew or may revoke a licence issued to an adoption agency or to a person referred to in subsection 5 of section 60 where in the Director's opinion,

(a) any officer, director or employee of the licensee has contravened or has knowingly permitted any person under the control or direction of or associated with the officer, director or employee, as the case may be, to contravene,

(i) any provision of this Act or the regulations,
or

(ii) any term or condition of the licence;

 (b) the licensee under subsection 5 of section 60 who is not a corporation, or any employee of the licensee has contravened or knowingly permitted any person under the control or direction of or associated with the employee, as the case may be, to contravene,

(i) any provision of this Act or the regulations, or

(ii) any term or condition of the licence; 

(c) any person has made a false statement in the application for the licence or renewal thereof, or in any report, document or other information required to be furnished by this Act or the regulations or by any other Act or regulation that applies to the adoption agency or the licensee under subsection 5 of section 60, as the case may be;

(d) where the applicant is a corporation, a change in the officers or directors of the applicant would, if

the applicant were applying for the licence in the first instance, afford grounds for refusing to issue a licence under clause *c* of subsection 1; or

- (e) the adoption agency is operated in a manner that is prejudicial to the health, safety or welfare of the children being placed by the adoption agency for adoption. *New.*

62.—(1) In this section and in sections 63 and 65, ^{Interpre-}
“Board” means the Children’s Services Review Board estab- ^{tation}
lished under *The Children’s Residential Services Act, 1978.* 1978, c.

(2) Where a licensee is dissatisfied with the terms and con- ^{Hearing}
ditions prescribed by a Director under subsection 2, 3, 4 or 5 of
section 60, the licensee may, within fifteen days after the licence
is received by the licensee by written notice given to the
Director and to the Board, require a hearing by the Board and
the Board shall appoint a time for and shall hold a hearing.

(3) The Board, pursuant to a hearing under subsection 2, ^{Board may}
may affirm the terms and conditions prescribed by a Direc- ^{impose}
tor under subsection 2, 3, 4 or 5 of section 60 or may cancel ^{terms and}
such terms and conditions or may prescribe such other terms ^{conditions}
and conditions in lieu of those prescribed by the Director
as it considers proper.

(4) For the purposes of subsection 2, a licence shall be ^{Receipt of}
deemed to be received by a licensee on the tenth day after ^{licence}
the day of mailing of the licence unless the person to whom
the licence is issued establishes that the person did not
receive it or did not, acting in good faith, through absence,
accident, illness or other cause beyond the person’s control,
receive the licence until a later date.

(5) Where a Director proposes to refuse to issue a ^{Notice of}
licence under section 61 or to refuse to renew or revoke a ^{proposal}
licence issued under that section, the Director shall cause ^{to refuse}
notice to be served of the Director’s proposal, together with ^{to issue}
written reasons therefor, on the applicant or the licensee, as ^{or to}
the case may be. ^{revoke}

(6) A notice under subsection 5 shall inform the applicant ^{Notice}
or licensee, as the case may be, that the applicant or ^{requiring}
licensee is entitled to a hearing by the Board if the applicant ^{hearing}
or licensee mails or delivers, within fifteen days after the
notice is served on the applicant or licensee, notice in
writing to the Director and to the Board requiring a hearing,
and the applicant or licensee, as the case may be, may so
require such a hearing.

Powers of
Director
where no
hearing

(7) Where an applicant or licensee does not require a hearing by the Board in accordance with subsection 6, the Director may carry out the proposal stated in the Director's notice under subsection 5 without a hearing.

Continuation
of licence
pending
renewal

(8) Where, within the time prescribed therefor or, if no time is prescribed, before expiration of a licence, a licensee has applied for renewal of a licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Board has made its decision. *New.*

Application

63. Sections 6, 8, 10 and 11 of *The Children's Residential Services Act, 1978* apply with necessary modifications to a notice under subsection 2 or 5 of section 62, to proceedings before the Board and to the powers of the Board under section 62 and to appeals therefrom. *New.*

Suspension
of licence

64. Notwithstanding section 62, a Director may, by causing notice to be served on an adoption agency or a licensee under subsection 5 of section 60, as the case may be, and without a hearing, provisionally suspend the licence of the adoption agency or the licensee where, in the opinion of the Director, the operation of the adoption agency or the licensee is an immediate threat to the health, safety or welfare of the children or child placed or to be placed by the adoption agency or the licensee, as the case may be, for adoption and the Director so states in such notice giving reasons therefor, and, upon suspension, the provisions of sections 62 and 63 apply as if the notice given under this section were a notice of a proposal under subsection 2 of section 62 to revoke the licence. *New.*

Child to be
placed by
licensee

65.—(1) No person other than an adoption agency or licensee under subsection 5 of section 60 shall,

(a) place or cause to be placed a child under eighteen years of age with another person; or

(b) take or send or attempt to take or send any child under eighteen years of age who is a resident of or who was born in Ontario, out of Ontario,

for the purpose of adoption.

(2) No person shall receive a child under eighteen years of age for the purpose of adoption without the prior approval of a Director under subsection 7. Approval of
Director
required

(3) Every adoption agency or licensee under subsection 5 of section 60 that proposes, Notice to
Director

(a) to place a child under eighteen years of age; or

(b) to take or send a child under eighteen years of age who is a resident of or was born in Ontario, out of Ontario to be placed,

for the purpose of adoption, shall in advance of the placement notify a Director of the proposed placement.

(4) Subsections 1, 2 and 3 do not apply to,

Application

(a) the placement of a child with a relative of the child or with the spouse of a parent of the child; or

(b) the taking or sending of a child out of Ontario,

(i) by a parent of the child for adoption by the spouse of the parent of the child, or

(ii) for placement of the child with a relative of the child for the purpose of adoption.

(5) Subsections 2 and 3 do not apply to the placement of a child by a society. Idem

(6) The Director shall forthwith after receiving a notice under subsection 3 obtain a report of a homestudy made by a person who, in the opinion of the Director or local director of a society, is qualified to make the homestudy of the person proposing to adopt the child. Homestudy

(7) The Director shall forthwith, after receiving the report of the results of the homestudy, approve the proposed placement for adoption or notify the adoption agency or the licensee under subsection 5 of section 60, as the case may be, and the person proposing to adopt the child of the Director's proposal to refuse approval of the placement and that the adoption agency or licensee and the person proposing to adopt the child are entitled to a hearing before the Board and the provisions of sections 6, 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to a notice under this subsection to proceedings before the Board and to powers of the Board. Decision of
Director,
etc.

1978. c. . . .

Supervision
of placement
by society

(8) Where the Director approves the proposed placement for adoption under subsection 7, the Director may direct a society, or in the case of a placement out of Ontario may arrange for a child protection agency recognized in the jurisdiction of the placement, to supervise the placement subject to such terms and conditions as the Director may prescribe. *New.*

Hearing

(9) Where the person proposing to adopt the child, the adoption agency or the licensee under subsection 5 of section 60, as the case may be, is dissatisfied with the terms and conditions prescribed by a Director under subsection 8, the person, the adoption agency or licensee, upon giving notice is entitled to a hearing before the Board and the provisions of sections 7, 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to such notice to proceedings before the Board and to powers of the Board.

Powers of
Director
where no
hearing

(10) Where a person proposing to adopt the child, the adoption agency or the licensee under subsection 5 of section 60, as the case may be, does not require a hearing by the Board in accordance with subsection 7, the Director may carry out the proposal stated in the Director's notice under that subsection without a hearing.

Review by
Director

66. Notwithstanding subsection 3 of section 69, a Director, with or without the request of any person, may review the decision of any adoption agency or licensee under subsection 5 of section 60 to refuse to place a child with a person for the purpose of adoption by that person or to remove the child who has been placed with a person for the purpose of adoption and the Director may confirm the decision of the adoption agency or licensee, as the case may be, or rescind the decision and the Director may give such direction, make any further decision or take any further step that an adoption agency or licensee under subsection 5 of section 60 is authorized to make, give or take under this Act. *New.*

Prohibition
against
payments
for
adoptions

67.—(1) Subject to subsection 2, no person, whether before or after the birth of a child, shall make, give or receive or agree to make, give or receive a payment or reward for or in consideration of or in relation to,

- (a) the adoption or proposed adoption of the child under this Part;
- (b) the giving of consent or the signing of an instrument of consent to the adoption of the child under this Part;

(c) the transfer of the custody or control of the child with a view to the adoption of the child under this Part; or

(d) the conduct of negotiations or the making of arrangements with a view to the adoption of the child under this Part.



(2) Subsection 1 does not apply to the payment of expenses ^{Idem} of an adoption agency or licensee under subsection 5 of section 60 or the payment of legal expenses in connection with an adoption or proposed adoption under this Part. R.S.O. 1970, c. 64, s. 88, *amended*.



68. Every society shall endeavour to secure the adoption of Crown wards, having regard to the best interest of each Crown ward. R.S.O. 1970, c. 64, s. 86 (1). ^{Duty of society to secure adoption}

69.—(1) In this section, “parent” includes,

^{Interpretation}

(a) a guardian;

(b) a person who has demonstrated a settled intention to treat a child as a child of the person’s family; and

(c) where a child is born outside marriage,

(i) a person who having acknowledged a parental relationship to the child has voluntarily provided for the child’s care and support,

(ii) a person who pursuant to an order of a court of competent jurisdiction or a written agreement is under a legal duty to provide for the child or has been granted custody or access to the child,

(iii) a person who has made a written acknowledgment of the fact of his or her parentage to the adoption agency or licensee under subsection 5 of section 60 placing the child for adoption,

but does not include the Crown, a society or a foster parent of a child. *New.*

Consent

(2) An order for the adoption of a child under eighteen years of age and who has not been married shall be made only with the written consent, given after the child is seven days old, of every person who is a parent or who has lawful custody or control of the child, but any person who has given his or her consent may cancel it by a document in writing to that effect within twenty-one days after the consent is given. R.S.O. 1970, c. 64, s. 73 (1, 2); 1971, c. 98, s. 4, Sched., par. 6, *amended*.

Rights and
responsi-
bilities

(3) Upon the giving of all the consents required under subsection 2, all the rights and responsibilities of a legal guardian of the child for the purpose of the child's care, custody and control belonging to the person or persons giving the consents shall, where the child is being placed for adoption by an adoption agency and, subject to subsection 11, transfer to, be vested in and be assumed by the adoption agency so long as the consents remain in force and until an adoption order is made.

Idem

(4) Notwithstanding subsection 3, the rights and responsibilities of a legal guardian of the child shall not transfer to an adoption agency until the twenty-one day period for cancellation of the consent given under subsection 2 has expired.

Idem,
Crown ward

(5) An order for the adoption of a child who is a Crown ward shall be made only with the written consent of a Director, in which case no other consent, except a consent required under subsection 6, is required. R.S.O. 1970, c. 64, s. 73 (3), *amended*.

Idem,
child and
where
married,
spouse of
child

(6) An order for the adoption of a child who is seven or more years of age shall be made only with the written consent of the child, and, where the child is married, with the written consent of the spouse except that the court may dispense with the consent of the child if the court is satisfied that, having regard to all the circumstances of the case, the consent would not be appropriate. R.S.O. 1970, c. 73 (4); 1975, c. 1, s. 31 (1).

Where
consent
not
given

(7) Where a consent required by this section has not been given, the court upon application by the applicant for the adoption may dispense with the requirement if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the requirement be dispensed with.

(8) The court shall not dispense with a consent required ^{Notice} under this section, except a consent required under subsection 6, until the court is satisfied that the person from whom the consent is required has had notice of the application for adoption and notice of the application to dispense with the consent, or that reasonable effort has been made, in the opinion of the court, to cause such person to be notified. R.S.O. 1970, c. 64, s. 73 (5, 6).

(9) Where a consent required by this section has been ^{Where consent given} given, it may after the twenty-one days referred to in subsection 2 and subject to subsections 10 and 11, be withdrawn by the person giving it only if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the consent be withdrawn. R.S.O. 1970, c. 64, s. 73 (7); 1975, c. 1, s. 31 (2).

(10) Subject to subsection 11, an application to the court ^{Consent not to be withdrawn} for the withdrawal of a consent given under subsection 2 shall not be made after the child has been placed for adoption by an adoption agency or licensee under subsection 5 of section 60 so long as the child remains in the care of the person with whom the child was placed for adoption.

(11) Where all the consents required under subsection 2 ^{Review by Director} have been given and, after the expiration of one year from the giving of the consents under subsection 2 or from a review of the child's status under this subsection, whichever is later, whether or not the child has been placed for adoption, an order for the adoption of the child has not been made, the adoption agency or licensee under subsection 5 of section 60, as the case may be, shall notify a Director and the Director or any person authorized by the Director shall review the status of the child and after such review the Director or such person, having regard to the best interests of the child, may,

(a) where the adoption agency or licensee is not a society direct the adoption agency or licensee to place the child into the care and custody of a society designated by the Director;

(b) where the child is in the care, custody and control of a society, direct the society to bring the child before the court under Part II to determine whether an order under section 30 should be made and thereafter the provisions of sections 28 to 36 apply, with necessary modifications, to the child.

- (c) where the child is in the care of the person with whom the child has been placed for adoption, confirm the placement of the child with that person or give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency or licensee is authorized to make, give or take under this Act;
- (d) where the child leaves or is removed from the care of the person with whom the child has been placed for adoption, give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency or licensee is authorized to make, give or take under this Act; or
- (e) direct the adoption agency or licensee to return the child to the care of the person giving the consent under subsection 2 where that person had charge of the child at the time the consent was given and has agreed to receive the child back into care, and upon giving such direction, every consent to the adoption given under subsection 2 shall be deemed to be withdrawn.

Application
to judge

(12) Where an application is made to the court under Part II pursuant to clause b of subsection 11, the child shall be brought before the court as if the child had been apprehended pursuant to section 21 or 22 and the child may be dealt with by the court in the same manner as though the child were a child apparently in need of protection. *New.*

Consent not
invalid by
reason of
age

(13) No consent required by this section is invalid by reason only of the fact that the person giving it is under eighteen years of age except that, in the case of a consent required under subsection 2 given by a person under eighteen years of age the consent is not valid unless the Official Guardian is satisfied that the consent reflects the true informed wishes of the person. R.S.O. 1970, c. 64, s. 73 (8); 1971, c. 98, s. 4, Sched., par. 6, *amended.*

Interference
with
child, etc.

(14) Subject to a direction of a Director under subsection 11 to the child, no person shall,

- (a) visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or

interfere with a child who has been placed for adoption by an adoption agency or licensee under subsection 5 of section 60; or

- (b) visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a person or persons with whom the child has been placed for adoption,

after the giving of all the consents under subsection 2, and before an order for the adoption of the child has been made, without the consent in writing of the adoption agency or licensee, as the case may be.

(15) Upon the placement of a child under eighteen years of age by an adoption agency or licensee under subsection 5 of section 60 for the purpose of adoption, and upon the giving of all the consents required under subsection 2, any outstanding order of access with respect to the child, other than an order of access made under this Act, shall terminate. *New.* Termination of access order

70. An affidavit of execution in the prescribed form shall be attached to every consent required under this Part and to every cancellation under subsection 2 of section 69. R.S.O. 1970, c. 64, s. 74, *amended.* Affidavit of execution

71.—(1) The court in the county or district in which either the applicant or the child sought to be adopted resides at the time the application for an adoption order is filed has jurisdiction to make the order. R.S.O. 1970, c. 64, s. 70 (1); 1975, c. 1, s. 29 (1), *amended.* Jurisdiction of courts

(2) An application for an adoption order shall be heard and determined *in camera*. R.S.O. 1970, c. 64, s. 70 (2), *amended.* Application to be heard in camera

(3) Where the court referred to in subsection 1 is satisfied that there is preponderance of convenience in favour of hearing the application for adoption in another county or district, the court may, at any time after the application is made and before the hearing of the application, transfer the proceedings to a court in any other county or district. Transfer of proceedings

(4) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. *New.* Affidavit evidence

(5) Where an application for an adoption order is not heard by the court within the twelve months next following Stale applications

the signing of the application by the applicant, it shall not be proceeded with unless the court otherwise directs, but another application may be made in its stead. R.S.O. 1970, c. 64, s. 70 (3), *amended*.

Guardian
ad litem

(6) For the purpose of an application for an order for the adoption of a child under eighteen years of age, the court may appoint a person to act as the guardian *ad litem* of the child before or upon the hearing of the application if in the opinion of the court such appointment is required to protect the legal interests of the child in the proceedings and the court may make such order as to the costs of the guardian *ad litem* as the court deems appropriate in the circumstances. 1975, c. 1, s. 29 (2).

When order
may be
made

72. The court may make an order for the adoption of any child resident in Ontario upon application therefor being made in the prescribed manner by a person resident in Ontario. R.S.O. 1970, c. 64, s. 71, *amended*.

Where order
not to be
made

73.—(1) The court shall not make an adoption order for a child who is under eighteen years of age and who has not been married unless the child has been placed with an applicant for adoption by an adoption agency or licensee under subsection 5 of section 60.

Application

(2) Subsection 1 does not apply to an application for adoption of a child,

(a) by a relative of the child; or

(b) by the spouse of the child's parent. *New.*

Where order
not to be
made

74.—(1) The court shall not make an adoption order,

(a) where the applicant is under eighteen years of age or, in the case of a joint application by a husband and wife, where the husband or wife is under eighteen years of age;

(b) where the applicant is unmarried, a widow, a widower, a divorced person or living apart from his or her spouse; or

(c) where the child being adopted is eighteen or more years of age or is under eighteen years of age and has been married,

unless the court is satisfied that there are special circumstances that justify the making of the order. R.S.O. 1970, c. 64, s. 72 (1); 1971, c. 98, s. 4, Sched., par. 6; 1975, c. 1, s. 30 (1), *amended*.

(2) Subsection 1 does not apply to an application for adoption of a child by a spouse of a parent of the child. ^{Application of subs. 1}
1975, c. 1, s. 30 (2), *amended*.

(3) Except in the case of a joint application by a husband and wife, an order shall not be made for the adoption of a child by more than one person. ^{Adoption by more than one person} R.S.O. 1970, c. 64, s. 72 (2).

(4) An adoption order shall not be made upon the application of a husband or wife without the written consent of the spouse, provided that the court may dispense with such consent where the spouses are living apart and where the court considers it in the best interests of the child that the consent be dispensed with. ^{Consent of adopting spouse} R.S.O. 1970, c. 64, s. 72 (3); 1975, c. 1, s. 30 (3), *amended*.



75.—(1) Where an application is made to the court for the adoption of a child who is under eighteen years of age and who has not been married, a Director shall file with the court prior to the hearing of the application a statement in writing, ^{Statement of Director}

(a) that the child has resided for six months or more with the applicant and, having regard to the best interests of the child, recommending whether or not, in the opinion of the Director, an order for the adoption of the child should be made; or

(b) that the applicant is an appropriate person to adopt the child and recommending that for reasons set out in the statement it is in the best interests of the child that the period of residence be dispensed with and an order for the adoption of the child should be made,

and the Director, in making a recommendation under clause *a* or *b*, may bring to the attention of the court any additional circumstances of the case that, in the Director's opinion, the court may wish to take into account before making or refusing the order.

(2) Where a Director recommends that an adoption order should not be made, the Director shall file a copy of the statement under subsection 1 with the court at least thirty days prior to the hearing and the Director shall cause a copy of the statement to be served upon the applicant within seven days after the Director filed the statement with the court. ^{Filing of notice}

Statement of local director	(3) In the case of a child referred to in subsection 1 who has been placed for adoption by a society, the statement referred to in clause <i>a</i> of that subsection is sufficient if it is made by the local director.
Report	(4) A Director or local director before making a recommendation under subsection 1 shall obtain a report <u>on the adjustment of the child in the home of the applicant made by the society with jurisdiction in the area where the applicant resides, or by such other person who <u>has received</u> prior approval from the Director or local director, as the case may be.</u> 1975, c. 1, s. 32, <i>amended</i> .
Application	(5) Subsections 1 and 4 do not apply to an application for adoption of a child, (a) by a relative of the child; or (b) by the spouse of the child's parent, unless the court hearing the application so directs. <i>New</i> .
Duty of court	76. The court before making an adoption order shall be satisfied, (a) that every person who has given a consent under this Part understands the nature and effect of the adoption order; and (b) that the order will be in the best interests of the child. R.S.O. 1970, c. 64, s. 77.
Procedure on application	77. Upon the hearing of an application for adoption, where the child is seven or more years of age, the court shall inquire into the capacity of the child to appreciate the nature of the application and shall, where practicable, hear the child. R.S.O. 1970, c. 64, s. 76.
Surname	 78.— (1) Subject to subsection 3, when making an adoption order, the court may order that the adopted child, (a) retain the surname by which the child was known immediately prior to the adoption; or (b) assume the surname of either or both of the adopting parents. 
Given names	(2) <u>Subject to subsection 3, in an adoption order, the court may in its discretion change the given name or names of the child as the adopting parent desires, and thereafter the adopted child is entitled to and is to be known by the name or names so given.</u> R.S.O. 1970, c. 64, s. 78, <i>amended</i> .
Consent required	(3) In the case of a child fourteen or more years of age, the court shall not make an order under this section changing the

given name or the surname of the child without the written consent of the child. *New.*

79. If the adopted child was born outside marriage, that fact shall not appear upon the adoption order. R.S.O. 1970, c. 64, s. 79, *amended.*

Born
outside
marriage
not to
appear

80.—(1) The documents used upon an application for an adoption order shall be sealed up and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of a Director.

Papers to
be sealed
up

(2) Within thirty days after the making of an adoption order, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit,

Trans-
mission
of order

(a) the original order to the adopting parent;

(b) one certified copy to a Director;

(c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and

(d) where the adopted child is a member of a band within the meaning of the *Indian Act* (Canada), one certified copy to the Registrar under that Act. R.S.C. 1970, c. I-6
R.S.O. 1970, c. 64, s. 80, *amended.*

81.—(1) Upon an application for an adoption order, the court, after considering any recommendation made by a Director, may postpone the determination of the application and make an interim order giving the custody of the child sought to be adopted to the applicant for a period not exceeding one year by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the child and otherwise as the court thinks fit. R.S.O. 1970, c. 64, s. 81 (1); 1975, c. 1, s. 33 (1).

Interim
order

(2) An interim custody order is not an adoption order.

Idem

(3) All consents required for an adoption order are necessary for an interim custody order, subject to a like power in the court to dispense with any such consent requirement. R.S.O. 1970, c. 64, s. 81 (2, 3).

Consents

(4) Where an applicant has obtained an interim custody order and subsequently takes up residence outside Ontario, the court may nevertheless make the adoption order applied

Residence
outside
Ontario

for if a Director makes a recommendation in favour of the order under section 75. R.S.O. 1970, c. 64, s. 81 (4); 1975, c. 1, s. 33 (2).

Order
final

82. Subject to section 83, an order granting an adoption shall be final and irrevocable and shall not be questioned or reviewed in any court of competent jurisdiction by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review. *New.*

Appeal

83.—(1) An applicant for an adoption order, or a Director or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, may appeal to the county or district court of the county or district in which the decision was made from the decision granting or refusing an adoption order.

Idem

(2) An applicant for an adoption order, a Director, or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, or a person who has given consent under subsection 2 of section 69 may appeal to the county or district court of the county or district in which the decision was made from the decision of the court made pursuant to subsection 9 of section 69, granting or refusing the withdrawal of a consent to the adoption.

Appeal
in camera

(3) An appeal under subsection 1 or 2 shall be heard *in camera* and notice of the appeal shall be served on a Director.

Notice

(4) A notice of appeal under subsection 1 or 2 shall be served within thirty days of the making of the decision being appealed and no extension of the time for serving the notice or making the appeal shall be granted. *New.*

Effect of
order on
previous
adoption

84. An adoption order or an interim custody order may be made in respect of a child who has previously been the subject of an adoption order, and the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the child for the purposes of this Part. R.S.O. 1970, c. 64, s. 82.

Status of
adopted
child

85.—(1) For all purposes, as of the date of the making of an adoption order,

- (a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was his or her parent before the adoption

order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adopting parent,

as if the adopted child had been born to the adopting parent and all the rights and responsibilities of a legal guardian of the child that have vested in any adoption agency pursuant to subsection 3 of section 69 are terminated. R.S.O. 1970, c. 64, s. 83 (1), *amended*.

(2) The relationship to one another of all persons whether the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made, the kindred of that former parent or any other person shall, for all purposes, be determined in accordance with subsection 1. R.S.O. 1970, c. 64, s. 83 (2). Application of subs. 1 to relationship of persons

(3) In any will or other document, whether heretofore or hereafter in existence, and whether or not the maker of the will or other document was alive at the date of the coming into force of this section, unless the contrary is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of the person's own adoption or the adoption of another person. 1975, c. 1, s. 34 (1), *amended*. References in will or other document

(4) This section applies and shall be deemed to have always applied with respect to any adoption made under any legislation heretofore in force, but not so as to affect, Application of section

(a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and

(b) any interest in property or right that has indefeasibly vested before the coming into force of this section. 1975, c. 1, s. 34 (2).

(5) Subsections 1 and 2 do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove any person from a relationship in consanguinity that, but for this section, would have existed. R.S.O. 1970, c. 64, s. 83 (4). Exception

86.—(1) An adoption effected according to the law of any other province or territory of Canada or of any other state Effect of adoptions under other laws

or country or part thereof, before or after the commencement of this section, has the same effect in Ontario as an adoption under this Act. R.S.O. 1970, c. 64, s. 85.

Idem

(2) Where, as a requirement of the making of an order or orders of a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof, that effects an adoption of a child according to the laws of the jurisdiction where the order or orders were made, any statement, consent, declaration or similar document in writing is made by a person, organization, province, state, country or legal representative of any of them, in whom the rights and responsibilities of guardianship in respect of the child have been legally vested, such statement, consent, declaration or similar document in writing shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

Subsidies

87. Where, in the opinion of the Minister, the best interests of a child may be served by granting a subsidy to the adopting parent of the child, the Minister may out of moneys appropriated therefor by the Legislature authorize payments, from time to time and upon such terms and conditions as the Minister may prescribe, of such amounts as are necessary for such purposes. *New*.

PART IV

GENERAL

Regulations

88.—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing additional powers and duties of a Director;
2. prescribing the records that shall be kept by societies and the returns and reports that shall be made by societies under this Act;
3. requiring societies to provide such information and to make such returns and reports as are prescribed and prescribing the persons or agencies to whom such information and returns are to be given and reports are to be made;
4. prescribing the standard of services that societies shall provide and governing the qualifications of persons or classes of persons employed by or involved in the management and operation of societies;

5. prescribing provisions to be included in the by-laws of societies;
6. defining "net expenditures";
7. prescribing expenses that may be charged for services under this Act and classes of such expenses and the terms and conditions under which any such expense or class thereof may be charged;
8. prescribing the manner of determining the proportion of an approved estimate that is referable to each municipality in the area served by a society for the purposes of subsection 6 of section 8;
9. prescribing additional powers and duties of a child welfare review committee appointed under section 12;
10. determining the amounts of payments under subsections 1 and 2 of section 13 and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
11. providing for payments to reimburse a municipality for all or any part of any increase in its financial obligations to a society under this Act and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
12. determining the costs to municipalities and to societies for the purposes of section 14;
13. determining the amounts of payments to be made to municipalities and societies under section 14 and providing for classes of such payments and the terms and conditions under which such payments or class or classes thereof may be made;
14. prescribing the times and manner of payment of capital grants under section 14;
15. prescribing "special needs" of children,
 - i. for which joint facilities may be established under section 16, and

ii. for the purpose of subsection 4 of section 25;

16. prescribing terms and conditions to be included in any agreement or class of agreement entered into under section 25;

17. for the purposes of subsection 9 of section 25, prescribing the manner of determining the nature and degree of a developmental handicap that would render a child incapable of consenting to an agreement made under that section;



18. governing the construction, alteration, renovation, extension and furnishing and equipping of homes operated or supervised by societies and providing residential care for children, other than children's residences under *The Children's Residential Services Act, 1978*;

1978, c. . . .



19. prescribing the information that shall be recorded in the register established under subsection 3 of section 52;

20. prescribing the period or periods of time that information or any class thereof shall be maintained in the register established under subsection 3 of section 52 and providing for the expunging of information or any class thereof from the register;



21. prescribing the practice and procedure of the court under this Act or any Part thereof;



22. fixing fees, costs, charges and expenses payable on proceedings under this Act or any Part thereof and providing for dispensing with the payment of such fees, costs, charges and expenses where, owing to lack of means or for any other reason, the court considers such action advisable;

23. prescribing rules and standards governing the establishment and operation of adoption agencies;



24. governing the issuance, renewal and expiration of a licence required under section 60 and prescribing terms and conditions for the issuance, renewal and expiration of licences;

25. prescribing the fees payable by an applicant for a licence or renewal thereof;



26. providing for the inspection of books of account and other records of adoption agencies or licensees under subsection 5 of section 60;
27. governing the qualifications of persons or classes of persons employed by or involved in the management and operation of adoption agencies or licensees under subsection 5 of section 60;
28. requiring adoption agencies or licensees under subsection 5 of section 60 to provide such information and to make such returns and reports as are prescribed and prescribing persons or agencies to whom such information and returns are to be given and reports are to be made;
29. requiring the bonding of,
 - i. adoption agencies or licensees under subsection 5 of section 60, and
 - ii. the employees of adoption agencies or licensees under subsection 5 of section 60,
 or any class thereof, and providing for the forfeiture of the bond and the disposition of the proceeds thereof;
30. prescribing the form and term of bonds that are required and the collateral security that may be required with the bonds;
31. prescribing the records that shall be kept by adoption agencies or licensees under subsection 5 of section 60 and the returns and reports that shall be made by adoption agencies or licensees under this Act;
32. prescribing states and countries for the purposes of section 58;
33. prescribing forms and providing for their use;
34. prescribing the practices and procedures on appeals to the county or district court under sections 43 and 83. R.S.O. 1970, c. 64, s. 89; 1971, c. 109, s. 7; 1975, c. 1, s. 37 (1-6), *amended*.

(2) The Minister shall prescribe,

Idem

- (a) standards of services relating to the purposes set out in subsection 2 of section 6; and

(b) procedures and practices to be followed by societies. *New.*

Inter-
provincial
agreements

89. The Minister, with the approval of the Lieutenant Governor in Council, may on behalf of the Government of Ontario make agreements with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services to or the care or protection of children. *New.*

Service

90.—(1) Unless otherwise provided for in this Act or the regulations, any notice or order required to be given, delivered, filed or served under this Act or the regulations is sufficiently given, delivered, filed or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the person's last known address.

Idem

(2) Where service is made by mail, the service shall be deemed to be made on the tenth day after the day of mailing unless the person on whom service is being made establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date.

Idem

(3) Where any notice is required to be given, delivered, filed or served on a Director under this Act or the regulations or a certified copy of an order is required to be transmitted to a Director under clause *b* of subsection 2 of section 80 such notice or certified copy is sufficiently given, delivered, filed, served or transmitted, as the case may be, on or to a Director if the notice or certified copy is given, delivered, filed, served or transmitted on or to any of the Directors appointed pursuant to subsection 1 of section 2. *New.*

Reference
to parent

91. Except for section 25, a reference in this Act or the regulations to "a parent" or "the parent" shall be deemed to be a reference to every parent of the child unless the context otherwise requires. *New.*

Giving
of notice

92. Where any notice required in proceedings under this Act has not been given, the court may proceed to hear or dispose of the matter as if such notice had been given where the court is satisfied that reasonable effort has been made to cause such notice to be given. *New.*

Offences

93.—(1) Every person who,

- (a) knowingly furnishes false information in any application under this Act or in any statement, report or return required to be furnished under this Act or the regulations;
- (b) fails to comply with an order of the court under subsection 4 of section 35;
- (c) fails to comply with an order made by a Director under subsection 17 of section 52;
- (d) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with any person acting in the performance of the person's duties under section 21, 22 or 23;
- (e) is a parent and who permits his or her child to contravene any provision of subsection 1 or 2 of section 54;
- (f) contravenes any provision of,
 - (i) section 46,
 - (ii) subsection 2 of section 49,
 - (iii) subsection 3 of section 50,
 - (iv) subsection 4, 7 or 8 of section 52,
 - (v) subsection 1 of section 53,
 - (vi) subsection 14 of section 69,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation or in such furnishing of false information, failure, hindrance, obstruction or interference or attempted hindrance, obstruction or interference or contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or, except for a contravention of subsection 2 of section 49, to imprisonment for a term of not more than one year, or to both.

- (2) Every person who contravenes the provisions of,

Idem

- (a) subsection 2 of section 47; or
- (b) subsection 1 or 2 of section 65,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corpora-

tion is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) Every person who contravenes the provisions of subsection 3 of section 47 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both, and for any subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(4) Every person who contravenes the provisions of subsection 1 of section 60 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 for each day on which such offence continues or to imprisonment for a term of not more than three years, or to both.

Idem

(5) Every person who contravenes the provisions of subsection 1 of section 67 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three years, or to both.

Idem

(6) Every person who contravenes subsection 7 of section 57, and every director, officer or employee of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$10,000, or to imprisonment for a term of not more than three years, or both. *New.*

Injunction
proceedings

94.—(1) The society having the care, custody or supervision of the child may apply to the Supreme Court by originating notice for an order enjoining any person acting in contravention of section 46, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

Idem

(2) The adoption agency that placed the child for adoption may apply to the Supreme Court by originating notice for an

order enjoining any person acting in contravention of subsection 14 of section 69, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

(3) A Director may apply to the Supreme Court by originating notice for an order enjoining any person acting in contravention of subsection 1 of section 60, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgement of the Supreme Court. Idem

(4) Any person may apply to the Supreme Court for an order varying or discharging any order made under subsection 1, 2 or 3. *New.* Idem

95. The following are repealed:

Repeals

1. *The Child Welfare Act*, being chapter 64, of the Revised Statutes of Ontario, 1970.
2. *The Child Welfare Amendment Act, 1972*, being chapter 109.
3. *The Child Welfare Amendment Act, 1973*, being chapter 75.
4. *The Child Welfare Amendment Act, 1975*, being chapter 1.
5. Paragraph 6 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98.

96. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

97. The short title of this Act is *The Child Welfare Act*, Short title
1978.

An Act to revise
The Child Welfare Act

1st Reading

June 8th, 1978

2nd Reading

June 19th, 1978

3rd Reading

THE HON. KEITH C. NORTON
Minister of Community and
Social Services

*(Reprinted as amended by the
Social Development Committee)*

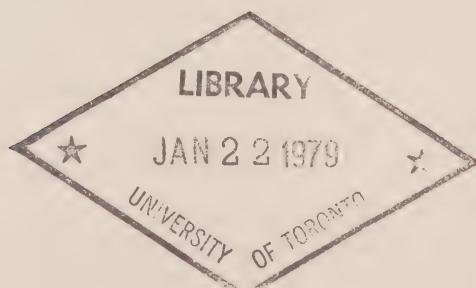
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17 **BILL 114**

2ND SESSION, 31ST LEGISLATURE, ONTARIO
27 ELIZABETH II, 1978

Legislation

An Act to revise The Child Welfare Act

THE HON. KEITH C. NORTON
Minister of Community and Social Services



TORONTO

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BILL 114

1978

An Act to revise The Child Welfare Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1. In this Act,

Interpre-
tation

- (a) "approved estimate" means an estimate of net expenditures of a society finally approved under sections 8 to 12;
- (b) "best interests of the child" means the best interests of the child in the circumstances having regard, in addition to all other relevant considerations, to
 - (i) the mental, emotional and physical needs of the child and the appropriate care or treatment, or both, to meet such needs,
 - (ii) the child's opportunity to enjoy a parent-child relationship and to be a wanted and needed member within a family structure,
 - (iii) the child's mental, emotional and physical stages of development,
 - (iv) the effect upon the child of any disruption of the child's sense of continuity,
 - (v) the merits of any plan proposed by the agency that would be caring for the child, compared with the merits of the child returning to or remaining with his or her parent,
 - (vi) the views and preferences of the child, where such views and preferences can reasonably be ascertained,

- (vii) the effect upon the child of any delay in the final disposition in the proceedings,
- (viii) any risk to the child of returning the child to or allowing the child to remain in the care of his or her parent;
- (c) "court", unless otherwise indicated, means a provincial court (family division) or the Unified Family Court;
- (d) "Director" means an employee of the Ministry appointed by the Minister as a director for all or any of the purposes of this Act;
- (e) "judge", unless otherwise indicated, means a provincial judge presiding in a provincial court (family division) or in the Unified Family Court;
- (f) "local director" means the local director of a society appointed under this Act;
- (g) "Minister" means the Minister of Community and Social Services;
- (h) "Ministry" means the Ministry of Community and Social Services;
- (i) "municipality" means the corporation of a county, city, or separated town or a district, metropolitan or regional municipality, but does not include a city or separated town in a district, metropolitan or regional municipality, and in a territorial district means the corporation of a city, town, village or improvement district;
- (j) "prescribed" means prescribed by the regulations;
- (k) "regulations" means the regulations made under this Act;
- (l) "society" means a children's aid society approved by the Lieutenant Governor in Council under this Act. R.S.O. 1970, c. 64, s. 1; 1972, c. 1, s. 19 (3); 1975, c. 1, s. 1, *amended*.

PART I

OFFICERS, SOCIETIES

Appointment
of Director

2.—(1) The Minister may appoint one or more persons to act as a Director. *New.*

Duties of
Director

(2) A Director,

(a) shall advise and supervise societies;

- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;
- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of any place in which a child in the care of a society is placed;
- (e) shall prepare and submit an annual report to the Minister;
- (f) shall keep books of account of all moneys received and disbursed by the Director;
- (g) may designate in writing a place or class of places as a place of safety for the purposes of this Act;
- (h) shall ensure that societies are providing the standard of services and following the procedures and practices prescribed under subsection 3 of section 6;
- (i) shall perform such other duties as are prescribed by this Act or the regulations or by the Lieutenant Governor in Council. R.S.O. 1970, c. 64, s. 2 (1), *amended*.

(3) Where a Director is absent or there is a vacancy in the office of a Director, the powers and duties of the Director shall be exercised and performed by such employee of the Ministry as the Minister designates. R.S.O. 1970, c. 64, s. 2 (3), *amended*. Acting
Director

3.—(1) The Minister may by order appoint a judge of the county or district court to make an investigation into any matter, Investi-
gation

- (a) relating to any person in the care of a society; or
- (b) for the due administration of this Act,

and the person appointed shall report the result of the investigation to the Minister. R.S.O. 1970, c. 64, s. 3 (1); 1975, c. 1, s. 3, *amended*.

(2) For the purposes of an investigation under subsection 1, the judge has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1970, c. 64, s. 3 (2); 1971, c. 49, s. 18. Powers on
investiga-
tion
1971, c. 49

4.—(1) Every society shall appoint a local director who shall be responsible to the board of directors of the society for the administration and enforcement of this Act and the Appoint-
ment of
local
directors

regulations in the area in which the society has jurisdiction, who shall co-operate with a Director to this end and who shall carry out such other duties as are required by the constitution, by-laws and directions of the society.

Powers
of local
directors,
etc.

1974, c. 109

R.S.O. 1970,
c. 374

(2) Every local director and every person designated by the board of directors of a society has for the purposes of this Act the powers of a school attendance counsellor under *The Education Act, 1974* and a police officer, and any one of them shall be deemed to be an officer within the meaning of section 10 of *The Public Authorities Protection Act*, and that section and the other provisions of that Act apply to them in the same manner and to the same extent as they do to the officers mentioned in that section. R.S.O. 1970, c. 64, s. 4, *amended*.

Police
assistance

5. A Director or a local director or any person acting under the authority of either of them may call for aid, in the performance of the duties of the Director, local director or the person, as the case may be, a member of the police force responsible for policing the area in which the aid is required. R.S.O. 1970, c. 64, s. 5, *amended*.

Establish-
ment of
societies
R.S.O. 1970,
c. 89

6.—(1) Every society shall be incorporated under *The Corporations Act* or a predecessor thereof as a corporation without share capital and shall be approved by the Lieutenant Governor in Council.

Purposes

- (2) Every society shall be operated for the purposes of,
- (a) investigating allegations or evidence that children may be in need of protection;
 - (b) protecting children where necessary;
 - (c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
 - (d) providing care for children assigned or committed to its care under this or any other Act;
 - (e) supervising children assigned to its supervision under this or any other Act;
 - (f) placing children for adoption;
 - (g) assisting the parents of children born or likely to be born outside of marriage and their children born outside of marriage; and
 - (h) any other duties given to it by this or any other Act. R.S.O. 1970, c. 64, s. 6 (1, 2), *amended*.

(3) Every society shall,

Standard
of services

(a) provide the standard of services relating to the purposes set out in subsection 2 of section 6; and

(b) follow the procedures and practices,

that shall be prescribed by the Minister.

(4) The by-laws of every society shall contain such provisions as the regulations prescribe, and a certified copy of the by-laws and any amendments thereto shall be filed with a Director forthwith after they are made, and no such by-laws or amendments shall come into operation until they have been approved by the Minister. R.S.O. 1970, c. 64, s. 6 (3, 4), *amended*.

By-laws

7.—(1) A society shall be governed by a board of directors composed of such municipal representatives as are determined under subsections 2 to 6 and the president, one or more vice-presidents, the secretary, the treasurer and such other officers and members as are determined, elected in such manner and for such period as the by-laws of the society provide.

Board of
directors

(2) Where a society has jurisdiction in but not outside a city, separated town or a district, regional or metropolitan municipality, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the city, separated town or the district, regional or metropolitan municipality.

Municipal
repre-
sentatives

(3) Where a society has jurisdiction in a county but not in a city or separated town, the municipal representatives shall be not fewer than four appointed from among themselves by the council of the county.

Idem

(4) Where a society has jurisdiction in an area that includes a county or part of a county outside a city, separated town or a district, regional or metropolitan municipality,

Idem

(a) one municipal representative shall be appointed from among themselves by the council of each county, city, separated town and the district, regional or metropolitan municipality in the jurisdiction; and

(b) the council of the county, city, separated town or the district, regional or metropolitan municipality having the largest population as determined by the last revised assessment rolls shall appoint from among themselves such other municipal representa-

tives as are required, so that the total number of municipal representatives on the board of directors is not fewer than four.

Idem

(5) In subsections 2 to 4, a reference to a city or separated town does not include a city or separated town in a district, regional or metropolitan municipality.

Idem

(6) Where a society has jurisdiction in an area that includes a district or part of a district outside a city or a district, regional or metropolitan municipality, the municipal representatives shall be appointed in the manner determined under subsection 4, except that the district welfare administration board or the District Child Welfare Budget Board referred to in section 10, as the case may be, shall appoint the representatives required by subsection 4 to be appointed by the council of a county.

Executive committee

(7) The board of directors of a society shall pass a by-law providing for the election from among their number of an executive committee of nine members, consisting of the president, the treasurer, four municipal representatives and three other directors, and delegating to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the board.

Quorum

(8) A majority of the members of an executive committee constitutes a quorum. R.S.O. 1970, c. 64, s. 7, *amended*.

Estimate of expenditures

8.—(1) Every society shall before a date to be fixed each year by a Director, which date shall be no later than the last day of February in the year next following, prepare and file with the Director and, subject to subsection 2 and section 10, with each municipality in the area in which the society has jurisdiction, an estimate of its net expenditures, determined in accordance with the regulations, for operations for the year next following.

Minister may determine estimate

(2) Where a society has not filed an estimate in accordance with subsection 1 before the date prescribed therefor by the Director under that subsection, the Minister may at any time thereafter determine the amount of the estimate and cause the estimate to be filed with the society and, subject to subsection 3 of section 10, with each municipality in the area in which the society has jurisdiction.

Estimate deemed to be approved

(3) An estimate filed under subsection 2 shall, subject to subsections 1 and 2 of section 11, be deemed to be approved

by the Minister under subsection 1 of section 9, sixty days after it is filed.

(4) The council of every municipality with whom an estimate is filed in accordance with subsection 1 shall, subject to section 10 and subsection 1 of section 11, grant its approval to the estimate within sixty days from the date fixed by the Director. 1975, c. 1, s. 4, *part, amended*. Approval of estimate by council of municipality

(5) A municipality that has not, within the period of time fixed under subsection 4, Estimate deemed to be approved

(a) granted its approval to the estimate pursuant to subsection 4; or

(b) referred the estimate to a child welfare review committee under section 11,

shall, at the expiration of that period, be deemed to have granted its approval under subsection 4. *New*.

(6) Where a society has jurisdiction in more than one municipality, the portion of the estimate of net expenditures that is referable to each municipality shall, subject to subsection 10 of section 12, be determined in accordance with the regulations. 1975, c. 1, s. 4, *amended*. Proportion referable to each municipality

(7) Subsection 6 does not apply where a district welfare administration board has been established under *The District Welfare Administration Boards Act*. 1975, c. 1, s. 4, *part*. Exception R.S.O. 1970. c. 132

9.—(1) After an estimate has been filed with a Director pursuant to subsection 1 of section 8 and approved by the council of each municipality with whom it was filed, pursuant to subsection 4 of section 8, the Minister may approve the estimate as filed, or, subject to subsection 2 and subsection 2 of section 11, vary the amount of the estimate and approve the estimate as so varied. Approval by Minister

(2) Where the Minister intends to vary the amount of an estimate and to approve the estimate as so varied pursuant to subsection 1, the Minister shall, at least thirty days prior to approving the estimate, cause notice to be given of the Minister's intention to approve or to vary, as the case may be, to the society and to the council of each municipality in the area in which the society has jurisdiction or to the District Child Welfare Budget Board, as the case may be. 1975, c. 1, s. 5, *amended*. Notice by Minister

Interpre-
tation

10.—(1) In this section,

R.S.O. 1970,
c. 132

(a) “district” means a district as defined in *The District Welfare Administration Boards Act*;

(b) “municipality” means a municipality as defined in *The District Welfare Administration Boards Act*. R.S.O. 1970, c. 64, s. 10 (1).

District
Child
Welfare
Budget
Board

(2) The councils of every municipality in a district in which a district welfare administration board has not been established shall, on or before the 1st day of October in each year, jointly appoint five persons to be a board known as the District Child Welfare Budget Board. R.S.O. 1970, c. 64, s. 10 (2); 1975, c. 1, s. 6 (1).

Approval of
estimates

(3) The estimate of net expenditures of a society in a district shall be approved by the District Child Welfare Budget Board in lieu of the approval by the municipal councils otherwise required by section 8. R.S.O. 1970, c. 64, s. 10 (3); 1975, c. 1, s. 6 (2), *amended*.

Reference
to child
welfare
review
committee

11.—(1) Where the council of a municipality or a District Child Welfare Budget Board does not agree with the amount of the estimate submitted to it by a society pursuant to subsection 1 of section 8 or with the portion of the estimate that is referable to the municipality, it may, on or before the expiration of the time fixed under subsection 4 of section 8 for the approval of the estimate by the municipality or the District Child Welfare Budget Board, as the case may be, request the Minister to refer the matter to a child welfare review committee. R.S.O. 1970, c. 64, s. 11 (1); 1975, c. 1, s. 7 (1), *amended*.

Idem

(2) Where a society, the council of a municipality or a District Child Welfare Budget Board, as the case may be, does not agree with the amount of the estimate,

(a) that has been filed pursuant to subsection 2 of section 8; or

(b) that the Minister intends to approve as varied pursuant to subsection 1 of section 9,

any one of them may,

- (c) in the case of an estimate referred to in clause *a*, before the expiration of sixty days after the filing of the estimate; and
- (d) in the case of an estimate referred to in clause *b*, after receiving notice of the Minister's intention pursuant to subsection 2 of section 9 and before the Minister's approval is given under subsection 1 of section 9,

request the Minister to refer the matter to a child welfare review committee. 1975, c. 1, s. 7 (2), *amended*.

(3) The provisions of subsection 2 apply with necessary modifications to the council of a municipality or a District Child Welfare Budget Board that does not agree with the portion of the estimate referable to the municipality, where the estimate has been filed by the Minister pursuant to subsection 2 of section 8. *New*.

12.—(1) For the purposes of this section and section 11, a child welfare review committee shall consist of,

Idem
Composition
of child
welfare
review
committee

- (a) one member appointed by the Minister, who shall be chairman;
- (b) one member appointed by the Ontario Association of Children's Aid Societies; and
- (c) one member appointed by the council of the municipality or the District Child Welfare Budget Board, as the case may be. R.S.O. 1970, c. 64, s. 11 (3), *amended*.

(2) Where a society has jurisdiction in more than one municipality and there is no District Child Welfare Budget Board, the member to be appointed under clause *c* of subsection 1 shall be appointed jointly by those municipalities. R.S.O. 1970, c. 64, s. 11 (5), *amended*.

Joint
appoint-
ment to
committee

(3) Where the Minister receives a request under subsection 1 or 2 of section 11, the Minister shall forthwith appoint the member referred to in clause *a* of subsection 1 and cause notice to be given to the Ontario Association of Children's Aid Societies and the council of the municipality or the District Child Welfare Budget Board, as the case may be, to appoint, within ten days of the notice having been given, the members referred to in clauses *b* and *c* of subsection 1, respectively, and to inform the Minister forthwith of the names of the members appointed. *New*.

Appoint-
ment of
members

Notice

(4) The Minister shall, after being informed under subsection 3, forthwith cause notice of the names of the members of the child welfare review committee to be given to the parties concerned. R.S.O. 1970, c. 64, s. 11 (4), *amended*.

Failure to
appoint
member

(5) Where a party who receives a notice to appoint a member to the committee under subsection 3 fails to appoint a member within the time prescribed, the Minister shall, in the place of the party who failed to make the appointment, forthwith appoint the member to the committee. R.S.O. 1970, c. 64, s. 11 (6), *amended*.

Procedure

(6) A child welfare review committee shall be convened by the chairman thereof within ten days after all the members have been appointed and the committee shall determine its own procedures. R.S.O. 1970, c. 64, s. 11 (7), *amended*.

Evidence

(7) A child welfare review committee may receive such written or oral evidence from a Director, the society, the municipality or District Child Welfare Budget Board, as the case may be, or any other person as it in its discretion considers proper whether admissible in a court of law or not and may require the Director to present evidence and make submissions. R.S.O. 1970, c. 64, s. 11 (8), *amended*.

Idem

(8) A Director shall, when required by a child welfare review committee, present evidence and make submissions before the committee. *New*.

Findings of
committee

(9) A child welfare review committee shall review the evidence submitted to it and obtain any additional evidence or material it considers necessary and shall report its findings and make recommendations to the Minister within thirty days from the date that the committee first convenes and the findings and recommendations of the committee shall be made available to the parties concerned. R.S.O. 1970, c. 64, s. 11 (9).

Decision of
Minister

(10) After reviewing the findings and recommendations of a child welfare review committee, the Minister may approve the estimate filed under subsection 1 or 2 of section 8, vary the amount of the estimate and approve the estimate as so varied or determine the apportionment referred to in subsection 6 of section 8, as the case may be, and the decision of the Minister is final. R.S.O. 1970, c. 64, s. 11 (10), *amended*.

Notice

(11) Notice of the Minister's decision shall be given to the parties concerned within thirty days after the Minister receives the report and recommendations of a child welfare review committee. R.S.O. 1970, c. 64, s. 11 (11), *amended*.

13.—(1) There shall be paid out of the moneys appropriated therefor by the Legislature to each society an amount, determined in accordance with the regulations, of the approved estimate of the society. Payments
by Ontario

(2) Every municipality shall pay to the society having jurisdiction in the municipality an amount, determined in accordance with the regulations, of the portion determined in accordance with subsection 6 of section 8, of the approved estimate of the society that is referable to the municipality. Payments
by municipi-
ality

(3) Any amount payable to a society under this section in respect of an approved estimate, including advances before such estimate is approved, may be paid at such times and in such manner as are determined by the Minister. 1975, c. 1, s. 8, *amended*. Manner of
payment

14.—(1) Where the erection, purchase or other acquisition of a building by a municipality or by a society for the occupation in whole or in part by the society for use for a purpose other than to provide facilities and services to meet such special needs of children as are prescribed for the purposes of section 16 has been approved by the Minister, the Minister may, out of the moneys appropriated therefor by the Legislature, direct payment to the municipality or to the society of an amount, determined in accordance with the regulations, of the cost to the municipality or society of the building determined in accordance with the regulations. Capital
payments

(2) Where the Minister has approved the erection of a new building, an addition to an existing building, the purchase or other acquisition of an existing building, the structural alteration or the renovation or the furnishing and equipping of a building by a society for the provision of facilities and services to meet such special needs of children as are prescribed for the purposes of section 16, the Minister may direct payment to the society out of moneys appropriated therefor by the Legislature of an amount, determined in accordance with the regulations, towards the cost determined in accordance with the regulations of the new building, addition, acquisition, structural alteration, renovation or furnishing and equipping, as the case may be, that is applicable to the facilities and services. 1972, c. 109, s. 1, *amended*. Idem

15.—(1) The council of any municipality shall pass by-laws for the levying of such amounts as are necessary for the purpose of meeting any liability imposed on the municipality under this Act and may pass by-laws for the Power
to make
levies

purpose of affording to a society such other assistance as the council considers advisable.

When
society a
local board
R.S.O. 1970,
c. 324

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of *The Ontario Municipal Employees Retirement System Act* and not for any other purpose. R.S.O. 1970, c. 64, s. 15, *amended*.

Special
homes and
services

16. Where two or more societies have concurrent or contiguous jurisdictions they may with the approval of the Minister enter into an agreement establishing a joint committee for the purpose of providing facilities and services for the joint use of the societies to meet such special needs of children as are prescribed by the regulations, and sections 8 to 14 apply to the joint committee, for the purposes for which it was established, in the same manner as if the joint committee were a society. R.S.O. 1970, c. 64, s. 17, *amended*.

Temporary
board

17. Where, in the opinion of the Lieutenant Governor in Council, a society is not able to perform its duties, the Lieutenant Governor in Council may appoint a board of directors who shall be the board of directors of the society for such period as the Lieutenant Governor in Council considers advisable. R.S.O. 1970, c. 64, s. 18, *amended*.

Dissolution
of societies

18. The Lieutenant Governor in Council may, at any time upon the recommendation of the Minister, dissolve a society on such date as the order provides, and upon the dissolution of a society its property vests in the Crown to be held and disposed of in such manner as the Lieutenant Governor in Council determines. R.S.O. 1970, c. 64, s. 19, *amended*.

PART II

PROTECTION AND CARE OF CHILDREN

Interpre-
tation

19.—(1) In this Part and Part IV,

(a) “child” means a person actually or apparently under sixteen years of age, and in the case of a person who is the subject of an order under subsection 1 of section 30, includes a person under eighteen years of age;

(b) “child in need of protection” means,

- (i) a child who is brought, with the consent of the person in whose charge the child is, before a court to be dealt with under this Part,
- (ii) a child who is deserted by the person in whose charge the child is,
- (iii) a child where the person, in whose charge the child is, cannot for any reason care properly for the child, or where that person has died and there is no suitable person to care for the child,
- (iv) a child who is living in an unfit or improper place,
- (v) a child found associating with an unfit or improper person,
- (vi) a child found begging or receiving charity in a public place,
- (vii) a child where the person in whose charge the child is is unable to control the child,
- (viii) a child who without sufficient cause is habitually absent from home or school,
- (ix) a child where the person in whose charge the child is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for the child's health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or otherwise fails to protect the child adequately,
- (x) a child whose emotional or mental development is endangered because of emotional rejection or deprivation of affection by the person in whose charge the child is,
- (xi) a child whose life, health or morals may be endangered by the conduct of the person in whose charge the child is;

- (c) “developmental handicap” means a condition of mental impairment present or occurring during a person’s formative years that is associated with limitations in adaptive behaviour;
- (d) “foster home” means a home, other than the home of the child’s parent, in which a child is placed for care and supervision but not for the purposes of adoption;
- (e) “parent” includes,
- (i) a guardian,
 - (ii) a person who has demonstrated a settled intention to treat a child as a child of the person’s family, and
 - (iii) a person who is not recognized in law to be a parent of a child but,
 - 1. has acknowledged a parental relationship to the child and has voluntarily provided for the child’s care and support,
 - 2. by an order of a court of competent jurisdiction or a written agreement, is under a legal duty to provide for the child or has been granted custody of or access to the child, or
 - 3. has made a written acknowledgment of the fact of his or her parentage to the society having or applying for the care or supervision of the child,
- but does not include the Crown, a society or a foster parent of a child;

(f) “place of safety” means a receiving home, foster home, hospital, and such other place or class of places designated in writing by a Director, but does not include a training school under *The Training Schools Act*;

(g) “receiving home” means an institution or home operated or supervised by a society for the temporary care of children. R.S.O. 1970, c. 64, s. 20 (1); 1972, c. 109, s. 2; 1975, c. 1, s. 12 (1-4), *amended*.

(2) Subject to subsection 3 and subsection 3 of section 32, an application in respect of a child under this Part shall be heard by a court in the county or district in which the child

R.S.O. 1970,
c. 467

By whom
cases are
to be
heard

was taken into care. R.S.O. 1970, c. 64, s. 20 (2); 1975, c. 1, s. 12 (5), *amended*.

(3) Where,

Transfer of
proceedings

- (a) a child is taken into care, the court in the county or district in which the child is taken into care; or
- (b) a child is produced before the court under section 21 or 22, the court in the county or district in which the child is produced,

is satisfied that there is a preponderance of convenience in favour of holding the hearing in respect of the child in another county or district, the court may, at any time after an application is made in respect of the child under this Part and before hearing the application, transfer the proceedings to a court in any other county or district.

(4) For the purposes of an application under this Part, where the parent of a child is under eighteen years of age, the Official Guardian shall be the guardian *ad litem* of the parent with the duty of safeguarding the parent's interests before the court unless the court appoints any other person to be guardian *ad litem* for this purpose, and the court may make such order as to the costs of the guardian *ad litem* as the court considers just. R.S.O. 1970, c. 64, s. 20 (4); 1971, c. 98, s. 4, Sched., par. 6, *amended*.

20.—(1) A child may have legal representation at any stage in proceedings under this Part.

Legal
repre-
sentation
of child

(2) Where on an application under this Part a child does not have legal representation, the court shall as soon as practicable in the proceedings, determine whether legal representation is desirable to protect the interests of the child and if at that or any later stage in the proceedings the court determines that legal representation is desirable the court shall direct that legal representation be provided for the child.

Idem

(3) In determining whether legal representation is desirable to protect the interests of the child under subsection 2 where,

Idem

- (a) the court is of the opinion that there is a difference in the views of the child and,
 - (i) the views of the society, or
 - (ii) the views of a parent of the child,

and the society intends that the child be removed from the care of his or her parent or any other per-

son or remain in the care of the society pursuant to an order under paragraph 2 or 3 of subsection 1 of section 30, as the case may be;

- (b) the child is in the care of the society and a parent is not present at any stage of the proceedings;
- (c) the child is in the care of the society and is alleged to be a child upon whom abuse, as defined in subsection 1 of section 47, has been inflicted; or
- (d) an order under section 33 excluding the child from the hearing is made or is likely to be made,

the court shall direct that legal representation be provided for the child unless, having regard to the views and preferences of the child, where such views and preferences can reasonably be ascertained the court is satisfied that the interests of the child are otherwise adequately protected.

New.

How child
in need of
protection
brought
before
court

21.—(1) A police officer, a Director, a local director or a person authorized by a Director or the local director, who has reasonable and probable grounds to believe that any child is apparently in need of protection, may,

- (a) without warrant take the child to a place of safety and detain the child there until the matter can be brought before a court; or
- (b) apply to a court for an order requiring the person in whose charge the child is to produce the child before a court at the time and place named in the order. R.S.O. 1970, c. 64, s. 21; 1975, c. 1, s. 13 (1), *amended*.

Idem

(2) A police officer, a Director, a local director or a person authorized by a Director or by a local director, who has reasonable and probable grounds to believe that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society, may without warrant take the child to a place of safety and detain the child there. *New.*

Right of
entry

(3) Where a person authorized under subsection 1 or 2 has reasonable and probable grounds to believe that a child referred to in subsection 1 or 2 is on any premises, the person may without warrant enter the premises, if need be by force, and without warrant search for and remove the child from the premises.

1971, c. 47,
not to apply

(4) The provisions of *The Statutory Powers Procedure Act, 1971* do not apply to proceedings under this section. 1975, c. 1, s. 13 (2), *amended*.

22.—(1) Where it appears to a justice of the peace, on information laid before the justice on oath, Warrant to search for child in need of protection

- (a) that there are reasonable and probable grounds to believe that a child is in need of protection; or
- (b) that a child actually or apparently under sixteen years of age has departed or has been removed from the lawful care and custody of a society without the consent of the society,

the justice may issue a warrant authorizing a police officer, a Director, a local director or a person authorized by a Director or the local director to search for the child and to take the child to and detain the child in a place of safety. R.S.O. 1970, c. 64, s. 22 (1); 1972, c. 109, s. 3; 1975, c. 1, s. 14, *amended*.

(2) Where, upon application to a court by any person, Idem the court is satisfied that there are reasonable and probable grounds to believe that a child is in need of protection and that the matter has been reported to a society and the local director of that society or person authorized by the local director has refused, or failed within a reasonable time, to apprehend the child or to apply to a court under section 21 or to apply for a warrant under subsection 1, the court may, after affording the society an opportunity to be heard,

- (a) make an order directing the local director of that society or person authorized by the local director, as the case may be, to search for the child and to take the child to and detain the child in a place of safety until the matter can be brought before a court; or
- (b) order a person in whose charge the child is to produce the child before a court at the time and place named in the order. *New*.

(3) A person authorized by a warrant issued under subsection 1 or an order made under clause *a* of subsection 2, may enter, if need be by force, any house, building or other place specified in the warrant or order and may search for and remove the child therefrom. Right of entry

(4) It is not necessary in an information or warrant under subsection 1 or an application or order under clause *a* of subsection 2 to describe the child by name. R.S.O. 1970, c. 64, s. 22 (2, 3). Name not necessary

23.—(1) In this section, “homemaker” means a person approved by the local director or a Director and who remains or is placed on a premises for the purpose of caring for a child. 1975, c. 1, s. 15, *part*. Interpretation.

Homemaker
may remain
on premises

(2) Where it appears to a person entering a premises pursuant to section 21 or 22 that a child, who in the opinion of that person is unable to look after and care for himself or herself, has been temporarily left on the premises without proper or competent care or supervision and that a person having charge of the child is not available or is unable to consent to the placement of a homemaker on the premises, the person entering the premises, instead of taking the child to a place of safety, may,

(a) remain on the premises; or

(b) arrange with a society for the placement of a homemaker on the premises,

for the purpose of caring for the child and thereafter, subject to subsections 6, 7 and 8, the provisions of sections 27 to 36 apply with necessary modifications to the child. 1975, c. 1, s. 15, *part, amended*.

Idem

(3) A homemaker remaining or placed on a premises pursuant to subsection 2 may,

(a) enter and live on the premises; and

(b) carry on normal housekeeping activities on the premises,

in such manner and to such extent as is reasonably necessary to care for the child and may exercise reasonable control and discipline over the child.

Society or
Director may
provide goods
and services

(4) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society or a Director, as the case may be, may provide goods and services on the premises necessary to properly care for the child. 1975, c. 1, s. 15, *part*.

Protection
from
personal
liability

(5) A person who enters a premises pursuant to section 21 or 22 and who remains or is placed on a premises as a homemaker, pursuant to subsection 2 so long as the person is acting in good faith with reasonable care in the circumstances, is not liable for damages,

(a) for entering the premises;

(b) in connection with or arising out of the carrying on of normal housekeeping activities on the premises;

(c) for providing goods and services necessary to care for any child on the premises; or

- (d) for exercising reasonable control and discipline over any child on the premises. 1975, c. 1, s. 15, *part, amended*.

(6) Where a homemaker remains or is placed on a premises pursuant to subsection 2, the society shall forthwith notify or make reasonable efforts to notify the parent or other person having charge of the child, immediately before the homemaker entered the premises, of the placement of the homemaker on the premises. Notice to parent

(7) Notwithstanding subsection 1 of section 30, where an application is made to a court under section 28, the court may order the homemaker to withdraw from the premises or may confirm the placement or entry of the homemaker on the premises for such period as the court considers necessary or until a parent or a person having custody of the child returns to care for the child but, subject to subsection 8, not to exceed thirty days. 1975, c. 1, s. 15, *part*. Order of court

(8) Where a parent or person having custody of the child has not returned before the end of the period set out in the order referred to in subsection 7, a court may, upon application therefor either before or after the expiration of the period of the order, extend the period for such further period of time as the court considers necessary or after a further hearing may make an order under subsection 1 of section 30. 1975, c. 1, s. 15, *part, amended*. Extension of period of order

24. Where a child is in the care of an institution or home and no parent can be located, an officer of the institution or home after making reasonable efforts to locate a parent shall notify the society having jurisdiction in the area where the institution or home is located and the officer may, upon giving notice to the society, apply to a court that may determine that the child, notwithstanding clause *b* of subsection 1 of section 19, is a child in need of protection, and the provisions of sections 28 to 36 apply with necessary modifications to the child. R.S.O. 1970, c. 64, s. 23, *amended*. Child in institution

25.—(1) Subject to the approval of the society, where a parent through circumstances of a temporary nature is unable to make adequate provision for his or her child, the parent may voluntarily place the child into the care and custody of a society with jurisdiction in the area where the parent resides and, where the society agrees to receive the child into care and custody, the society shall enter into a written agreement with the parent for such care and custody for a period, subject to subsection 2, of six months or less. Temporary care by agreement

Extension
of
agreement

(2) Where a Director approves, the parties to an agreement under subsection 1 may agree to extend the agreement for a further period or periods of time that together with the first period shall not exceed twelve months, and the parties may agree to vary any other term or condition of the agreement that is not prescribed by the regulations.

Limitation
on agreement

(3) Notwithstanding subsections 1 and 2, in no case shall an agreement under subsection 1 or any extension of the agreement be made that results in a child being in the care and custody of a society,

(a) as a ward of the society;

(b) pursuant to an agreement under this section; or

(c) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c* for a continuous period of more than twenty-four months.

Special
needs
agreement

(4) Subject to the approval of the society or the Minister, as the case may be, when a parent is unable to provide the services required by his or her child because of the special needs of the child, the parent may voluntarily place the child into the care and custody or under the supervision of a society with jurisdiction in the area where the parent resides or of the Crown, and where the society or the Minister, as the case may be, agrees to receive the child into care and custody or under supervision, the society or the Minister shall enter into a written agreement with the parent,

(a) for the placement of the child into the care and custody or under the supervision of the Crown or the society, as the case may be; or

(b) for the provision by the Minister or the society, as the case may be, of the services required to meet the special needs of the child,

or both, for such period or periods of time, subject to subsection 12, as may be agreed upon between the parties. 1975, c. 1, s. 15, *part, amended*.

Con-
siderations
before
entering
into an
agreement

(5) Before entering into an agreement under this section, the society or the Minister, as the case may be, shall consider what assistance to the child is possible while the child is in

the care of his or her parent or other person and before the society or the Minister assumes care and custody or supervision of the child under an agreement. *New.*

(6) No agreement with a parent under this section is invalid by reason only of the fact that the parent entering into it is under eighteen years of age. 1975, c. 1, s. 15, *part.* Agreement not invalid by reason of age

(7) The voluntary placement of a child with a society or the provision of services to a child by a society pursuant to an agreement with the society under subsection 4 shall not be made without the consent of a Director. Consent of Director

(8) Subject to subsection 9, no agreement under this section or extension thereof shall be entered into under this section in respect of a child twelve or more years of age without the written consent of the child and such consent, subject to subsection 13, shall not be withdrawn. Consent of child

(9) The consent required under subsection 8 is not required where the child is not capable of giving the consent because of a developmental handicap determined in accordance with the regulations. Idem

(10) No agreement under this section or any extension thereof shall extend beyond the eighteenth birthday of the person in respect of whom the agreement has been made. Age limit

(11) A person sixteen or more years of age and under eighteen years of age or the person's parent where the person is not capable of entering into an agreement because of a developmental handicap determined in accordance with the regulations, may, with the approval of a Director, enter into an agreement under this section with the Minister or a society with jurisdiction in the area where the person resides with respect to the provision of services to such person by the Minister or the society, as the case may be. *New.* Agreements with respect to persons over sixteen years of age

(12) Any party to an agreement made under this section at any time during the period of the agreement or any extension thereof, may terminate the agreement by giving at least twenty-one days notice in writing to the other party or parties, as the case may be, and the agreement shall terminate on the expiration of the period set out in the notice. 1975, c. 1, s. 15, *part, amended.* Termination of agreement

(13) A child who is twelve or more years of age and in respect of whom an agreement under this section was made, at any time during the period of the agreement or any Idem

extension thereof, upon giving notice in writing to the society or to the Minister, as the case may be, may seek a review of the agreement by the society or the Minister and where,

- (a) the existing agreement is not confirmed; and
- (b) no further agreement is reached,

by the parties and the child within twenty-one days from the giving of the notice, the agreement shall be deemed to be terminated. *New.*

Return
of the
child

(14) Where an agreement under this section or an extension thereof,

- (a) is terminated under subsection 12, as soon as is practicable and within the time period set out in the notice given under that subsection;
- (b) is the subject of a review under subsection 13, upon the expiration of the twenty-one day period referred to in that subsection; or
- (c) expires pursuant to the terms of the agreement or pursuant to subsection 2, before or as soon as is practicable after the expiration thereof,

the society or the Minister, as the case may be, shall,

- (d) cause the child to be returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, but where there is an outstanding order for custody of the child, cause the child to be placed with the person entitled to custody of the child under the order; or
- (e) cause the matter to be brought before a court to determine whether the child is or would be, if left in the charge of or returned to the parent or other person in whose charge the child was immediately prior to the agreement being entered into, as the case may be, a child in need of protection, and thereafter the provisions of sections 28 to 36 apply, with necessary modifications, to the child. 1975, c. 1, s. 15, *part, amended.*

Application

(15) Subsection 14 does not apply to an agreement entered into under subsection 11. *New.*

Prohibition
on
placement

26. No person shall place a child into the care or custody of a society and no society shall receive a child into its care or custody except,

- (a) where the child is detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22;
- (b) where the care of the child is assumed under section 23;
- (c) pursuant to an order under this Part or any other Act respecting the care or custody of the child;
- (d) pursuant to an agreement under subsection 1 or 4 of section 25;
- (e) pursuant to the authority given under subsection 2 or 3 of section 43; or
- (f) pursuant to a consent given under subsection 2 of section 69. *New.*

27.—(1) As soon as is practicable and within five days ^{Detention limited} of detaining a child in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, or of assuming the care of a child under section 23, as the case may be,

- (a) the matter shall be brought before a court to determine whether the child is a child in need of protection;
- (b) the child shall be returned to the parent or other person in whose charge the child was immediately prior to the child's apprehension or to the assumption of the child's care, as the case may be, but, where there is an outstanding order for custody of the child, the child shall be placed with the person entitled to custody of the child under the order; or
- (c) an agreement shall be entered into under section 25. 1975, c. 1, s. 16, *amended*.

(2) A child who has been detained pursuant to subsection 2 ^{Period of detention} of section 21 or clause *b* of subsection 1 of section 22 in an observation and detention home established or designated under *The Provincial Courts Act* that has been designated as a place of safety, shall, as soon as is practicable after the commencement of the detention, be brought before the court and the court shall make an order,

R.S.O. 1970,
c. 369

- (a) confirming the child's detention for a period or periods that shall not in total exceed thirty days; or

(b) discharging the child from the observation and detention home,

and upon completion of the period of detention or the discharge, as the case may be, the child shall be removed from the observation and detention home for transfer back into the care of the society. *New.*

Hearing
to be
held

28.—(1) Where a child who has been apprehended or produced before the court under section 21 or 22 is before the court, there shall be a hearing to determine whether or not the child is in need of protection, and before the court finds that the child is in need of protection, the court shall also determine the child's age, name, and, in the case of a child detained in a place of safety under subsection 1 of section 21 or clause *a* of subsection 1 or subsection 2 of section 22, the location where the child was taken into protection and, subject to section 44, the religious faith of the child. 1975, c. 1, s. 17 (1), *amended*.

Witnesses

(2) The court, or upon the request of any party to the proceedings, a judge or a justice of the peace, has the power of summoning any person and requiring that person to attend before the court to testify and to produce such records, writings, documents and things as may be requisite, and the court has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce records, writings, documents and things as is vested in any court in civil cases. R.S.O. 1970, c. 64, s. 25 (2); 1975, c. 1, s. 17 (2), *amended*.

Who may
be heard

(3) The court may hear any person with evidence relevant to the hearing including the child, a parent of the child, subject to subsection 9, a foster parent of the child, the local director of a society or any person appearing on behalf of any of them, any person authorized by the board of directors of the society on behalf of the society, the clerk of a municipality or any person authorized by the council of the municipality on behalf of the municipality, and a district director of the Ministry or any person authorized by the Minister on behalf of Ontario. R.S.O. 1970, c. 64, s. 25 (3); 1972, c. 1, s. 19 (3), *amended*.

Evidence

R.S.O. 1970,
c. 151

(4) Notwithstanding any privilege or protection afforded under *The Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report whether oral or written, including any transcript, exhibit or finding in a prior proceed-

ing whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.

(5) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. Affidavit evidence

(6) In determining the best interests of the child for the purposes of this Part, the court shall have regard to those considerations in subclauses i to viii of clause b of section 1 that are relevant in the circumstances. *New.* Determination of best interests of the child

(7) The court shall not proceed to hear or dispose of the matter until the court is satisfied that the parent or other person having actual custody of the child, including, where applicable, any foster parent who immediately prior to the hearing has been caring for the child on behalf of a society for a continuous period of more than six months and, subject to subsection 8, the child, has had reasonable notice of the hearing or that reasonable effort has been made in the opinion of the court to cause the parent, such other person or the child to be notified. 1975, c. 1, s. 17 (3), *amended.* Notice

(8) A child who is, Notice to child

(a) ten or more years of age is entitled to notice under subsection 7 unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsection 7 unless the court decides that the child is entitled to be present at the hearing under clause b of section 33.

(9) A foster parent who is given notice under subsection 7 is entitled to make representations to the court and to be represented by counsel at the hearing, but shall take no further part in the hearing without leave of the court. Foster parent at hearing

(10) The court's right to receive evidence in any hearing under this Part shall not be restricted by the content of any notice given or application made in writing with respect to the proceedings and the court may without requiring notice to be given, unless it considers further notice to be necessary in the circumstances, make an order at any stage in a proceedings amending such notice or application. *New.* Amendments

Court may
dispense
with notice

(11) Where, in the opinion of the court, prompt service of any notice required under subsection 7 of this section or subsection 6 of section 23 cannot be effected and any delay might endanger the health or safety of the child, the court may dispense with the requirements of those subsections. R.S.O. 1970, c. 64, s. 25 (7); 1975, c. 1, s. 17 (6), *amended*.

Limitation
where
notice
dispensed
with

(12) Where the requirements of subsection 7 have been dispensed with pursuant to subsection 11, the court shall not make an order committing the child as a ward of the Crown or make an order committing the child as a ward of a society for a period exceeding thirty days, except after holding a further hearing, and the requirements of subsection 7 apply to such further hearing. R.S.O. 1970, c. 64, s. 25 (8); 1975, c. 1, s. 17 (7), *amended*.

Custody
during
adjourn-
ment

(13) A court may from time to time adjourn a hearing but no such adjournment shall, subject to subsection 14 and subsection 1 of section 29, be for more than thirty clear days, and pending final disposition of the hearing,

- (a) where a society shows cause why the child should remain or should be placed, as the case may be, in the temporary care and custody of the society, the court shall order that the child remain or be placed in the temporary care and custody of the society; or
- (b) where sufficient cause has not been shown why the child should remain or be placed, as the case may be, in the temporary care and custody of a society, the court shall order that the child be returned to or remain in the care and custody of the parent or other person in whose charge the child was immediately prior to,

(i) the child's detention, or

(ii) the production of the child before the court by the parent or other person,

unless the court is satisfied that some other order for care and custody of the child should be made, in which case, the court may make such other order for the temporary care and custody of the child as the court considers advisable pending final disposition of the hearing, except an order placing the child in a training school established under *The Training Schools Act*, or placing the child in an observation and detention home established or designated

under *The Provincial Courts Act* that has not been designated under this Act as a place of safety. R.S.O. 1970, c. 64, s. 25 (10); 1973, c. 75, s. 1, *amended*.

(14) The court having regard to all the circumstances of the case and with the consent of the parties may adjourn a hearing under subsection 13 for a period longer than thirty days, and, where the court grants such longer period of adjournment, the order for adjournment shall contain the court's reasons for granting such longer period. Longer period of adjournment

(15) Where the court is satisfied that cause has been shown why a change in the arrangements for the care and custody of the child should be made, the court may vary or terminate any order for care and custody made under subsection 13. Variation or termination of order

(16) For the purpose of determining under subsection 13 or 15 whether a child shall remain or be placed in the temporary care and custody of a society, the court may receive and base its decision upon evidence that the court considers credible and trustworthy in the circumstances. *New*. Standard of proof

(17) The provisions of this section apply with necessary modifications to proceedings under subsections 1 and 4 of section 32, section 35, section 37 and subsections 1 and 2 of section 38. 1972, c. 109, s. 4 (2), *amended*. Application

29.—(1) Where a child has been found to be a child in need of protection pursuant to section 28, a court may order the child and any parent of the child or other person, except a foster parent caring for the child on behalf of a society, in whose charge the child has been or may be, to attend for an assessment before a person or persons specified in the order and who in the opinion of the court are qualified to perform medical, emotional, developmental, psychological, educational or social assessments and who have consented to perform the assessments and within a time specified therein, and the person or persons making the assessments shall report the results thereof in writing to the court within thirty days of the order or within such longer period of time as the court may direct. Order for assessment

(2) The court shall provide a copy of the report of the assessment to, Report

(a) subject to subsection 3, any person who is the subject of the assessment;

(b) counsel or the agent on the record for the child;

(c) a parent appearing at the hearing or the parent's counsel or agent on the record; and

(d) the society that is a party to the proceedings,

and the court shall at any time upon request order a copy of the report to be provided to a Director, and the court may at any time order a copy of the report to be provided to any other person for the purpose of the case as the court may direct.

Idem

(3) A child who is the subject of the assessment and who is,

(a) ten or more years of age shall be provided with a copy of the report unless the court is satisfied that the effect of the contents of all or any part of the report would be injurious to the emotional health of the child, in which case the court may withhold all or any part of the report from the child; or

(b) under ten years of age shall not be provided with a copy of the report pursuant to subsection 2, unless the court considers it reasonable in the circumstances that the child receive the report or any part thereof.

Idem

(4) The report of the assessment shall form part of the court record in the case but shall not be admissible in evidence for any purpose in any other proceedings except in proceedings,

(a) by way of appeal under section 43;

1972, c. 98

(b) under *The Coroners Act, 1972*; or

(c) referred to section 51,

without the consent of the person or persons who are the subject of the assessment.

Inference
from
refusal

(5) Where a person who has been ordered under subsection 1 to attend for an assessment refuses to attend or to undergo the assessment, the court may draw such inferences relating to the placement of the child as it thinks appropriate. *New.*

30.—(1) Where a court finds a child to be a child in need of protection pursuant to section 28, the court shall make the one of the following orders that the court considers to be in the best interests of the child, namely:

Order where
child in
need of
protection

1. That the child be placed with or returned to the child's parent or other person, subject to supervision by the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing, for a period of not less than six months and not more than twelve months as in the circumstances of the case the court considers advisable.
2. That the child be made a ward of and committed to the care and custody of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing, for such period, not exceeding twelve months, as in the circumstances of the case the court considers advisable.
3. That the child be made a ward of the Crown until the wardship is terminated under section 38 or expires under section 42 and that the child be committed to the care of the society having jurisdiction in the area where the judge hearing the case presides at the time of the hearing. R.S.O. 1970, c. 64, s. 26; 1973, c. 75, s. 2, *amended*.

(2) Where a provincial judge has committed a child to the charge of a society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada), the child shall be deemed to be committed to the society under paragraph 2 of subsection 1,

Period of
committal

R.S.C. 1970,
c. J-3

- (a) where the order is for a fixed period that does not exceed twelve months, for the period specified in the order; or
- (b) where the order is for an indefinite period or exceeds twelve months, for twelve months.

(3) A provincial judge shall give reasonable notice to a society before committing a child to the charge of the society under paragraph *h* of subsection 1 of section 20 of the *Juvenile Delinquents Act* (Canada). 1975, c. 1, s. 18, *amended*.

Notice

(4) In making an order under paragraph 1 of subsection 1, the court may impose reasonable terms and conditions, relating to the method of supervision of the child,

Terms and
conditions

- (a) upon the person with whom the child has been placed or returned, as the case may be;
- (b) upon the supervising society;
- (c) upon the child; and
- (d) upon any other person where the person has been afforded an opportunity to be heard.

Determina-
tion of
order

(5) In determining which order to make under subsection 1, the court shall inquire of the parties whether any efforts have been made by a society or any other agency or person to assist the child while the child was in the care of his or her parent or other person and before the child came into the care of the society. *New.*

Payment
by parent

31.—(1) Subject to subsection 3, where a child is found to be a child in need of protection and,

- (a) is committed to the care of a society; or
- (b) is placed with a person other than the child's parent subject to supervision by a society,

the court may order a parent or the estate of a parent to pay the society such an amount and at such intervals as the court considers proper for each day the child is in the care or under the supervision, as the case may be, of the society.

Deter-
mination of
amount

(2) In determining the amount if any that shall be paid to the society under subsection 1, the court shall have regard to the following circumstances of the parent or the estate of the parent and of the child that the court considers relevant,

- (a) the assets and means of the child and of the parent or the estate of the parent;
- (b) the capacity of the child to provide for the child's own support;
- (c) the capacity of the parent or the estate of the parent to provide support;
- (d) the age and the physical and mental health of the child and of the parent;
- (e) the mental, emotional and physical needs of the child;

- (f) the legal obligation of the parent or the estate of the parent to provide support for any other person;
- (g) the child's aptitude for and reasonable prospects of obtaining an education;
- (h) any other legal right of the child to support other than out of public moneys.

(3) An order made under subsection 1 shall not extend ^{Idem} beyond the date when the child attains the age of eighteen years.

(4) A court may vary or rescind the order under subsection 1 where the circumstances of the child or the parent have changed. 1975, c. 1, s. 19 (1), *amended*. ^{Varying payments by parent}

(5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality on behalf of the society of the payments of the amounts required to be paid by the parent under subsection 1. R.S.O. 1970, c. 64, s. 27 (3). ^{Agreement to collect payments}

(6) An order made against a parent under subsection 1 may be enforced in the same manner as an order made under Part II of *The Family Law Reform Act, 1978*. R.S.O. 1970, c. 64, s. 27 (4), *amended*. ^{Enforcement of order 1978, c. 2}

32.—(1) Subject to subsections 6 and 7, where a child has been placed under the supervision of a society pursuant to an order made under paragraph 1 of subsection 1 of section 30, the society may at any time and shall, before the expiration of the period of supervision and upon giving notice to the child, the parent or any person having actual custody of the child, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify the variation or termination of any term or condition of the order relating to the method of supervision of the child or a further order under subsection 1 of section 30 and may, having regard to the best interests of the child, vary or terminate any term or condition in the order relating to the method of supervision of the child, terminate the order or make a further order under this Part. ^{Application to review supervision order}

(2) A society shall, as soon as is practicable, and within five days of removing a child from the parent or person with whom the child has been placed pursuant to an order under paragraph 1 of subsection 1 of section 30 apply to a court for a review of the child's status under subsection 1. ^{Time limit for application}

Jurisdiction
of court

(3) An application under subsection 1 or 4 may be heard by the court in the county or district in which the parent or other person with whom the child was placed pursuant to the order made under paragraph 1 of subsection 1 of section 30 resides at the time of the application.

Idem

(4) Where a child has been placed under the supervision of a society, pursuant to an order made under paragraph 1 of subsection 1 of section 30, a parent of the child, a person other than a parent with whom a child is placed or to whom a child is returned or the child where the child is twelve or more years of age may, after the expiration of six months from the making of the order or from the disposition of any previous application under this section for a review of the child's status, whichever is later, and upon giving notice to the society, apply to a court for a review of the child's status and,

- (a) where the court is satisfied that the termination of the order or the variation or termination of any term or condition of the order relating to the method of supervision of the child is in the best interests of the child, the court may terminate the order or vary or terminate such term or condition of the order; or
- (b) the court may make such further order under this Part as the court considers is in the best interests of the child. 1975, c. 1, s. 19 (2), *amended*.

Notice

(5) Subject to subsection 7, where a notice is given to the society under subsection 4,

- (a) by a parent of the child, the society shall forthwith upon receipt of the notice cause notice of the application to be given to the child, to any other parent of the child, and where applicable to the person other than a parent with whom the child is placed or to whom the child is returned;
- (b) by a person other than a parent, the society shall forthwith upon receipt of the notice cause notice of the application to be given to a parent of the child and the child; or
- (c) by the child, the society shall forthwith upon receipt of the notice cause notice of the application to be given to a parent of the child and where applicable to the person other than a parent with

whom the child is placed or to whom the child is returned. *New.*

(6) Notwithstanding paragraph 1 of subsection 1 of section 30, an application under subsection 1 may be made by the society having jurisdiction in the area where the parent or other person with whom the child was placed resided immediately prior to the application being made and, where the court makes an order, that society shall be given supervision or committal of the child, as the case may be. 1975, c. 1, s. 19 (2), *amended*. Jurisdiction of society

(7) A child who is,

Notice to child

(a) ten or more years of age is entitled to notice under subsection 1, and where applicable under subsection 5, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsection 1, and where applicable under subsection 5, unless the court decides that the child is entitled to be present at the hearing under clause b of section 33. *New.*

33. The court shall, in every proceeding under this Part, make an order directing whether any child who is the subject of the proceedings shall be excluded from or be present at the hearing or any part thereof and in making an order under this section there shall be a presumption that, Presence of child at hearing

(a) a child ten or more years of age is entitled to be present at any hearing that is part of the proceedings unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child; or

(b) a child under ten years of age shall not be present at any hearing that is part of the proceedings unless the court is satisfied that the hearing or any part thereof would be understandable to the child and not be injurious to the emotional health of the child. *New.*

34. Notwithstanding section 129 of *The Judicature Act* and with the leave of the court hearing an application under this Part, any step may be taken in the application, the Proceedings at any time or on a holiday
R.S.O. 1970,
c. 228

hearing may be held and the order may be made and performed at any time of any day, including a holiday. R.S.O. 1970, c. 64, s. 28.

Access to
child

35.—(1) Subject to subsections 2, 3, 5 and 6 and subsection 7 of section 38,

- (a) a parent of a child where the child is in the care or custody of a society or with whom the child is placed or to whom the child is returned subject to supervision by a society, upon giving notice to the society;
- (b) a person other than a parent, with whom a child is placed or to whom a child is returned subject to supervision by a society, upon giving notice to the society;
- (c) a child twelve or more years of age and who is in the care and custody or under the supervision of a society, upon giving notice to the society;
- (d) a society having care and custody or supervision of a child upon giving notice to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to any parent of the child, to any person with whom the child is placed or to whom the child is returned subject to supervision of a society, as the case may be, and to the child,

may, at any time after the commencement of proceedings under this Part respecting the child and whether before or after the making of an order under this Part, apply to a court for an order regarding the right of access to the child.

Idem

(2) No order regarding the right of access to a person over the age of sixteen years shall be made under subsection 4.

Idem

(3) No application under subsection 1 shall be made by a person referred to in clause *a*, *b* or *c* of that subsection before the expiration of six months from the date of any previous application under that subsection by such person. *New.*

Idem

(4) Upon an application therefor in accordance with subsection 1, or at the time of making any other order under this Part, a court, having regard to the best interests of the child shall consider whether or not an order regarding

the right of access to the child shall be made, altered, varied or discharged and may make such order as the court considers proper regarding the right of access to the child by any person or may alter, vary or discharge, any order so made. R.S.O. 1970, c. 64, s. 29, *amended*.

(5) A child who is,

Notice
may be
dispensed
with

- (a) ten or more years of age is entitled to notice under subsection 1 and where applicable under subsection 6, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1 and where applicable under subsection 6, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33.

(6) Subject to subsection 5, where a notice is given to the society under, Notice

- (a) clause *a* of subsection 1, the society shall forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to the child and to any other parent of the child; or
- (b) clause *b* of subsection 1, the society shall forthwith upon receipt of the notice cause notice of the application to be given to the parent of the child and to the child; or
- (c) clause *c* of subsection 1, the society shall forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to a parent of the child or to any other person with whom the child is placed or to whom the child is returned subject to supervision by a society, as the case may be. *New*.

36. The reasons for any decision made by a court under this Part may be oral or written and shall include, Contents
of
decision

- (a) a statement of the evidence upon which the decision of the court is based;
- (b) in the case of a decision granting or renewing an order under paragraph 1 of subsection 1 of section 30 or varying any term or condition of the order, a statement of any terms and conditions imposed by the court;
- (c) in the case of a decision granting or refusing,
 - (i) an order under paragraph 1, 2 or 3 of subsection 1 of section 30,
 - (ii) an order for the renewal or termination of any existing order under paragraph 1 or 2 of subsection 1 of section 30 or for the termination of any existing order under paragraph 3 of subsection 1 of section 30, or
 - (iii) an order varying any term or condition of any existing order under paragraph 1 of subsection 1 of section 30,

a statement of the plan proposed by a society or of a plan, if any, proposed by a parent of the child to meet the best interests of the child, but nothing in this section shall require the court to identify in the statement any person caring for the child during the period of any proposed placement or identify any place where the care is to be provided; and

- (d) a statement of the reasons for the decision, and, in the case of an order authorizing the removal of a child from or refusing to return the child to the parent or person in whose charge the child was immediately prior to the child's apprehension by a society, the statement shall include reasons why the child cannot be adequately protected without such removal or without the refusal of such return, as the case may be. R.S.O. 1970, c. 64, s. 30, *amended*.

Application
to review
society
wardship

37.—(1) Subject to subsection 4, where a child has been committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 30, the society may at any time and shall, before the expiration of the period of wardship, other than under section 42, and upon

giving notice to the child, the parent of the child and any foster parent who immediately prior to the application has been caring for the child on behalf of the society for a continuous period of more than six months, apply to a court for a review of the child's status and the court shall thereupon further inquire and determine whether the circumstances justify a further order under subsection 1 of section 30 and may, having regard to the best interests of the child, terminate the order or make a further order under this Part but in no case shall an order be made that results in the child being in the care and custody of a society,

- (a) as a ward of the society;
- (b) pursuant to an agreement under section 25; or
- (c) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in clauses *a*, *b* and *c*, for a continuous period of more than twenty-four months. R.S.O. 1970, c. 64, s. 31; 1973, c. 75, s. 4, *amended*.

(2) Subject to subsections 4 and 5, where a child has been ^{Idem} committed as a ward of a society pursuant to an order made under paragraph 2 of subsection 1 of section 30,

- (a) a parent of the child after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order or from the disposition of any previous application for a review of the child's status, whichever is later, and upon giving notice to the society having the care of the child,

may apply to a court for a review of the child's status and,

- (c) where the court is satisfied that the termination is in the best interests of the child, the court may terminate the order; or
- (d) the court may make such further order under this Part as the court considers necessary in the

best interests of the child, but in no case shall an order be made that results in the child being in the care and custody of a society,

- (i) as a ward of the society,
- (ii) pursuant to an agreement under subsection 1 of section 25, or
- (iii) pursuant to an order for adjournment made under subsection 13 of section 28 or any extension thereof,

or as a result of any combination of circumstances referred to in subclauses i, ii and iii, for a continuous period of more than twenty-four months. 1975, c. 1, s. 20, *amended*.

Extension
of limitation
period

(3) Notwithstanding subsections 1 and 2, where, on an application under subsection 1 or 2 for a review of the child's status, the hearing is adjourned to a date beyond the twenty-four month period prescribed in those subsections, the order to be reviewed shall not expire at the end of such period but shall be extended until an order pursuant to subsection 1 or 2 has been made. *New*.

Notice may
be
dispensed
with

(4) A child who is,

- (a) ten or more years of age is entitled to notice under subsection 1 and where applicable under subsection 5, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or
- (b) under ten years of age is not entitled to notice under subsection 1 and where applicable under subsection 5, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33. *New*.

Notice

(5) Subject to subsection 4, where a notice is given to the society under,

- (a) clause *a* of subsection 2, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, to the child and to any other parent of the child; or

- (b) clause *b* of subsection 2, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to a parent of the child and to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months.

(6) Notwithstanding subsections 13 and 15 of section 28, ^{Custody of child} where an application is made under this section for a review of the child's status, the child shall remain in the care and custody of the society having care and custody of the child at the time the application was made pending final disposition of the application by the court unless cause is shown why a change in the arrangements for the care and custody of the child should be made. *New.*

38.—(1) Subject to subsections 3, 4, 5 and 6, where a child ^{Application to review Crown wardship} has been committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 30,

- (a) a parent of the child after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to a Director and the society having the care of the child; or
- (b) the child, where the child is twelve or more years of age, after the expiration of six months from the making of the order of Crown wardship or from the disposition of any previous application under this section, whichever is later, and upon giving notice to the society having the care of the child,

may apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 7, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 30, that the court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 35. *New.*

(2) Subject to subsections 3, 4 and 5, where a child has been ^{Idem} committed as a ward of the Crown, pursuant to an order made under paragraph 3 of subsection 1 of section 30, the society having the care of the child upon giving notice to a

Director, any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months, any parent of the child and the child, may, at any time during the period of the Crown wardship, apply to a court for a review of the child's status, and, where the court is satisfied that termination is in the best interests of the child, the court shall, subject to subsection 7, order that the Crown wardship be terminated or, having regard to the best interests of the child, the court may make such other order under this Part, except an order under paragraph 2 of subsection 1 of section 30, that the court considers necessary and the court may include with any order made under this subsection an order granting or terminating the right of access to the child pursuant to section 35.

Notice not
required

(3) A notice is not required to be given under subsections 1 and 2 to a parent of the child where the child has attained the age of sixteen years. 1975, c. 1, s. 21, *amended*.

Notice may
be dispensed
with

(4) A child who is,

(a) ten or more years of age is entitled to notice under subsections 1 and 2 and where applicable under subsection 6, unless the court is satisfied that the effect of the hearing or any part thereof would be injurious to the emotional health of the child, in which case the court may direct that the child not be served with the notice; or

(b) under ten years of age is not entitled to notice under subsections 1 and 2 and where applicable under subsection 6, unless the court decides that the child is entitled to be present at the hearing under clause *b* of section 33. *New*.

Termination
of access

(5) Before making an order under subsection 1 or 2 terminating an order for access to the child made pursuant to section 35, the court shall consider whether the benefit to the child of any plan proposed for the child, including plans for seeking an adoption placement for the child, outweighs the benefit to the child of maintaining the access rights.

Notice

(6) Subject to subsection 4, where a notice is given to the society under,

(a) clause *a* of subsection 1, the society shall, forthwith upon receipt of the notice, cause notice of the application to be given to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more

than six months, to the child and to any other parent of the child; or

- (b) clause *b* of subsection 1, the society shall forthwith, upon receipt of the notice, cause notice of the application to be given to a Director, to a parent of the child and to any foster parent who immediately prior to the application has been caring for the child on behalf of the society for more than six months.
New.

(7) Subject to sections 39 and 42, where a child has been committed as a ward of the Crown, the order made under paragraph 3 of subsection 1 of section 30 shall remain in effect and the Crown wardship shall, subject to an adoption order being made with respect to the child under Part III, not be terminated by, reviewed in or otherwise brought before the court and an order of access to the child shall not be made or applied for where the child has been placed for the purpose of adoption in the home of a person who has been approved by a society or by a Director as a suitable person to adopt the child and while the child is residing in that person's home.

Crown wardship to remain in effect

(8) The placement for the purpose of adoption of the child referred to in subsection 7 shall not be made until any appeal under section 43, from,

When placement for adoption may be made

- (a) the decision granting an order of Crown wardship; or
(b) any decision granting or refusing an order under subsection 1 or 2,

has finally been disposed of, or until,

- (c) the period of time for commencing an appeal under section 43 from a decision referred to under clause *a* or *b* has expired; or
(d) any outstanding order of access to the child under this Act has been terminated,

whichever is the later. R.S.O. 1970, c. 64, s. 32 (2, 3), *amended.*

(9) Notwithstanding subsections 13 and 15 of section 28, where an application is made under this section for a review of the child's status, the child shall remain in the care and custody of the society having care and custody of the child at the time the application was made pending final disposition of the application by the court unless cause is

Custody of child

shown why a change in the arrangements for the care and custody of the child should be made. *New.*

Review
by
Director

39. A Director or any person authorized by the Director shall, during each calendar year beginning in the year 1979, review the status of each child who during that calendar year and, in the absence of any further order by the court has been or will continue to be a Crown ward for a continuous period of twenty-four months from the date of the order of Crown wardship or from the last review under this subsection, whichever is later, and the Director may after any such review direct the society having care of the child to make an application pursuant to subsection 2 of section 38 to a court for a review of the child's status. *New.*

Duties re
Crown wards

40.—(1) The Crown has and shall assume all the rights and responsibilities of a legal guardian of each child who is made a ward of the Crown for the purpose of the child's care, custody and control, and the powers, duties and obligations of the Crown in respect of the child other than the powers, duties and obligations assigned to a Director by this Act shall be exercised and discharged by the society having the care of the child.

Transfer of
Crown ward

(2) A Director may direct that a Crown ward be transferred to the care of any other society or institution designated by the Director. R.S.O. 1970, c. 64, s. 33, *amended.*

Society
to be
legal
guardian

41. Each society has and shall assume all the rights and responsibilities of a legal guardian of every child who is committed as a ward of the society for the purpose of their care, custody and control. R.S.O. 1970, c. 64, s. 34, *amended.*

Expiration
of
wardship

42. Every order under this Part shall be deemed to expire with the marriage of the child who is the subject of the order or when the child attains the age of eighteen years, but where a wardship expires as a result of a Crown ward attaining the age of eighteen years, a society may, with the approval of a Director, continue to provide care and maintenance for the former Crown ward if the former Crown ward,

(a) is enrolled as a full-time student at an educational institution; or

(b) is mentally or physically incapacitated,

for any period of time after the expiration of the wardship that does not extend beyond the date when the former Crown ward attains the age of twenty-one years. 1972, c. 109, s. 5 (1), *amended.*

43.—(1) A decision granting or refusing an order of a court under this Part except a decision made under subsection 1 of section 29 in respect of a child may be appealed to the county or district court of the county or district in which the decision was made by,

Appeal to
county
court

- (a) a parent or other person in whose charge the child may have been at the time of the child's apprehension;
- (b) a Director or local director; or
- (c) a next friend on behalf of the child. 1975, c. 1, s. 22, amended.

(2) Execution of the decision being appealed shall be stayed for ten days next following the service of the notice of appeal upon the court that made the decision being appealed, and, where the child is in the custody of the society at the time the decision being appealed is made, the child shall remain in the care and custody of the society,

Decision
stayed

- (a) during the ten days that execution of the decision is stayed; or
- (b) until the county or district court of the county or district in which the decision was made makes an order for temporary care and custody of the child pursuant to subsection 4,

whichever is earlier.

(3) Notwithstanding subsection 2, where the decision being appealed authorizes the child to remain in the care and custody of the society, the child shall, subject to subsection 4, remain in the care and custody of the society after the period of ten days referred to in subsection 2, pending final disposition of the appeal. *New.*

Child to
remain with
society

(4) Where the county or district court of the county or district in which the decision being appealed was made is satisfied that an order for care and custody of the child is in the best interests of the child, the county or district court may make such order for the temporary care and custody of the child that the county or district court considers advisable pending final disposition of any appeal made under this section, except an order placing the child in a training school established under *The Training Schools Act* or placing the child in an observation and detention home established or designated under *The Provincial Courts Act* that has not been designated under this Act as a place of safety, and the county or district court may, upon application by any party before the final disposition of the appeal and where the county or district court is satisfied that it is in the best interests of the

Temporary
order of
court

R.S.O. 1970.
cc. 467, 369

child, vary or terminate the order or make a further such order.

Period of
temporary
wardship

(5) Where, pursuant to the final disposition of the appeal, the child is committed as a ward of the society, any period of temporary care and custody ordered under subsection 4 shall be included in determining the twenty-four month period prescribed in subsection 1 or 2 of section 37.

Extension
of
limitation
period

(6) Notwithstanding subsection 5 and subsections 1 and 2 of section 37, where on an appeal under this section from a decision granting an order under paragraph 2 of subsection 1 of section 30 or an order for the renewal or termination of an order under that paragraph, the final disposition of the appeal extends beyond the twenty-four month period prescribed in subsection 1 or 2 of section 37, the order being appealed shall not expire at the end of such period but shall be extended until a final disposition is made of the appeal.

Extension of
time for
appeal

(7) No extension of the time for the commencement of the appeal shall be granted after the child has been placed for adoption. *New.*

New
evidence

(8) On the hearing of the appeal and with leave of the county or district court hearing the appeal, further evidence relating to matters both preceding and subsequent to the making of the decision being appealed, may be received either by affidavit, oral examination or as may be directed by the county or district court. 1975, c. 1, s. 22, *amended.*

Pre-
sumption
as to
religious
faith

44.—(1) Subject to subsection 2, for the purposes of this section, a child shall be deemed to have the same religious faith as the child's father unless it is shown that an agreement has been entered into in writing, signed by the child's parents, that the child be brought up in the same religious faith as the child's mother.

Child
born
outside
marriage

(2) For the purposes of this section, a child born outside marriage shall be deemed to have the religious faith of the child's mother.

Where
established
faith not
that of
parent

(3) Where a child is being raised in a religious faith other than the child's religious faith as determined under subsection 1 or 2 or where the child's religious faith cannot be readily determined under subsection 1 or 2, the court may determine the child to have such religious faith, if any, for the purposes of this section, as the court considers proper in the circumstances.

Religious
faith of
child

(4) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a

Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of the child's own religious faith, if any.

(5) Subsection 4 does not apply to the commitment of a child to the care of a society in a municipality in which there is only one society. Where only one society

(6) Where a society,

Application to waive subs. 4

(a) is unable to place a child in a suitable foster home within a reasonable time because of the operation of subsections 1 to 4; and

(b) would be able to place the child in a suitable foster home but for the operation of subsections 1 to 4,

the society or a Director may apply to the court who may order that subsection 4 does not apply to the child in respect of the placement.

(7) Notwithstanding anything in this section, the court may have regard to the wishes of the child in determining what order ought to be made as to the child's religious faith. Child's wishes to be consulted
R.S.O. 1970, c. 64, s. 37, *amended*.

45.—(1) A child who is a ward of the Crown or of a society may be placed by the society for any period of time in a foster home or other suitable place according to the needs of the child and the society shall ensure that the child so placed receives an education in accordance with the laws of Ontario and in keeping with the child's intellectual capacity and that provision is made for the child's occupational training and total development such as a good parent would provide for his or her own child. Society may place ward

(2) A child who is a ward of the Crown or of a society and who has been placed in a foster home or other suitable place may at any time be removed by the society when, in the opinion of a Director or the local director, the welfare of the child so requires. Removal of ward of society

(3) Where a child who is a ward of the Crown is placed in a foster home and, in the opinion of the local director with the approval of a Director, it is in the best interests of the child to place the child for adoption, the foster parents shall not be denied the opportunity of making application to adopt the child if they so desire. R.S.O. 1970, c. 64, s. 38, *amended*. Adoption of ward

Inter-
ference
with wards,
etc.

46. No person shall,

- (a) induce or attempt to induce a child to leave the care of a person or persons with whom the child is lawfully placed; or
- (b) detain or harbour a child who is lawfully in the care of a person or persons, after a demand is made by a person authorized to require the child to be delivered up; or
- (c) subject to section 35, visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or otherwise interfere with a child who is in the lawful care or custody of a society; or
- (d) subject to section 35, visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a foster parent of a child where the child is in the lawful care or custody of a society,

without the consent in writing of the society having the care, custody or supervision of the child. R.S.O. 1970, c. 64, s. 39, *amended*.

Interpre-
tation

47.—(1) For the purposes of this section and sections 49, 50, 51 and 52, “abuse” means a condition of,

- (a) physical harm;
- (b) malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death; or
- (c) sexual molestation. *New.*

Desertion,
abuse, etc.,
of child

(2) No person having the care, custody, control or charge of a child shall abandon or desert the child or inflict abuse upon the child or permit the child to suffer abuse.

Further
proceedings
as to child

(3) A court may, in connection with any case arising under subsection 2, hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. R.S.O. 1970, c. 64, s. 40, *amended*.

Leaving
child

48.—(1) No person having the care, custody, control or charge of a child shall leave the child without making reasonable provision, in the circumstances, for the supervision, care or safety of the child.

(2) A court may in connection with any case arising under subsection 1 hold a hearing in respect of any child concerned and may proceed as though the child had been brought before the court as a child apparently in need of protection. R.S.O. 1970, c. 64, s. 40, *amended*. Further proceedings as to child

(3) Where a person is charged with contravening subsection 1, the onus of establishing that reasonable provision was made in the circumstances for the supervision, care or safety of the child where the child is under the age of ten years, rests with the person charged. *New*. Onus

49.—(1) Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society. R.S.O. 1970, c. 64, s. 41 (1), *amended*. Reporting abuse of child

(2) Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has or has had charge of the child shall forthwith report the suspected abuse to a society. *New*. Duty of professional to report

(3) This section applies notwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection 1 or 2 unless the giving of the information is done maliciously or without reasonable grounds to suspect that the information is true. R.S.O. 1970, c. 64, s. 41 (2), *amended*. Privilege abolished

(4) Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client. *New*. Solicitor and client privilege

50.—(1) Subject to the provisions of subsection 4 with respect to section 26a of *The Mental Health Act* and notwithstanding the provisions of any other Act, where the applicant satisfies the court, Access to records, etc.
R.S.O. 1970, c. 269

- (a) that there are reasonable and probable grounds to believe that there are records, writings or documents at any place that are relevant to an investigation to determine whether abuse has been or is likely to be inflicted on a child; and
- (b) that a request by a Director, a local director of a society or a person authorized by the Director or by the local director to inspect such records,

writings or documents has been refused by the custodian of the records, writings or documents,

the court upon application by the Director or the society, as the case may be, and upon notice of the application being given to the custodian of the records, writings or documents, may, subject to subsection 2, make an order for the production by the custodian thereof of any of the records, writings or documents or any part or parts thereof that the court considers are relevant to an investigation to determine whether the abuse has been or is likely to be inflicted on the child, to the Director or the local director or person authorized by the Director or the local director, as the case may be, and the Director, local director or the person may inspect and extract information from such records, writings or documents or part or parts thereof that are designated in the order and reproduce such copies therefrom as the Director, local director or the person, as the case may be, considers necessary.

Non-disclosure of records, etc.

(2) The records, writings or documents or any part or parts thereof that are produced or disclosed to the court in the course of a hearing held to determine whether an order should be made under subsection 1 for the production of the records, writings or documents or any part or parts thereof, shall not be disclosed to any person except pursuant to and in accordance with any order made following the hearing under subsection 1.

Idem

(3) No person who obtains information pursuant to an order made under subsection 1 shall disclose or transmit or permit the disclosure or transmission of the information except for the purpose of the investigation to determine whether the child is in need of protection or for giving evidence in proceedings under this Part.

Matters to be considered by court
R.S.O. 1970, c. 269

(4) In determining whether to make an order under subsection 1 for the production of a clinical record within the meaning of section 26a of *The Mental Health Act*, the court shall give equal consideration to the matters to be considered under subsection 7 of section 26a of that Act and the health and safety of the child. *New.*

Action for recovery on behalf of child

51. Where the Official Guardian, or in the case of a child in the care of a society under paragraph 2 or 3 of subsection 1 of section 30, the society, is of the opinion that a child has a cause of action against a person or persons or other right of recovery by reason of the infliction of abuse upon the child and that the institution of proceedings to recover damages or other compensation would be in the best interests of the

child, the Official Guardian or the society, as the case may be, may institute and conduct such proceedings on behalf of the child in respect of the abuse suffered by the child.

52.—(1) In this section,

Interpre-
tation

(a) “Director” means an employee of the Ministry appointed by the Minister for the purposes of this section;

(b) “registered person” means a person named in or otherwise identifiable from the register established under subsection 3, but does not include the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 who are not themselves the subject of the report.

(2) Every society that receives information under section 49 concerning the abuse of a child, including a child in the care of a society, shall forthwith, after the information is verified in the manner determined by the Director, report the information to the Director in the prescribed form, and no action or other proceeding for damages shall be instituted against any officer or employee of a society for any act done in good faith in the execution or intended execution of any duty imposed on the society under this subsection or for any alleged neglect or default in good faith of such duty.

Society
to report
information
concerning
abuse

(3) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information received by societies under section 49 concerning the abuse of children, but the register shall not contain any information that has the effect of identifying the person or persons making the report to a society pursuant to subsection 1 or 2 of section 49 unless such person or persons are themselves the subject of the report.

Register

(4) Subject to subsections 5 to 10 and notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the register established under subsection 3.

Information
confidential

(5) A coroner, a legally qualified medical practitioner or police officer authorized in writing and directed by a coroner for the purposes of an investigation or inquest under *The Coroners Act, 1972* and the Official Guardian or a person duly authorized as the agent of the Official Guardian may inspect or remove the information maintained in the register established under subsection 3 and may disclose or transmit

Exceptions

1972, c. 98

that information only in accordance with the authority vested in the person and in the case of the Official Guardian or his duly authorized agent only for the purposes of section 51.

Idem

(6) The Director and the following persons with the approval of the Director, and subject to such terms and conditions as the Director may impose, may inspect or remove or permit the inspection or removal of the information maintained in the register and may disclose or transmit or permit the disclosure or transmission of that information to any person referred to in subsection 5 or to any other person referred to in this subsection:

1. A person who is on the staff of,
 - i. the Ministry,
 - ii. a society, or
 - iii. a child protection agency recognized by a jurisdiction outside Ontario.
2. A person who is or may be providing services or treatment to a registered person.

Idem

(7) A person who has the written approval of the Director and who is engaged in *bona fide* research may inspect the information referred to in subsection 4 but shall not use or communicate the information for a purpose other than research, academic pursuits or the compilation of statistical data and shall not communicate any information that has the effect of identifying any person named in the register.

Idem

(8) A registered person or the registered person's agent may inspect the information maintained in the register, but shall not inspect information that refers to persons other than the registered person.

Idem

(9) A legally qualified medical practitioner who is approved by the Director may inspect information referred to in subsection 4 that is approved by the Director.

Idem

(10) The Director or a person approved by the Director who is on the staff of the Ministry may expunge a name from the register or otherwise amend the register pursuant to a decision of the Director or as prescribed by the regulations.

Register
inadmissible

(11) The register established under subsection 3 is inadmissible in evidence for any purpose in any proceedings, except,

- (a) to prove compliance or non-compliance with any of the provisions of this section;
- (b) in an appeal made under subsection 19;
- (c) in proceedings under *The Coroners Act, 1972*; or 1972, c. 98
- (d) in proceedings referred to in section 51.

(12) Where an entry is made in the register, the Director ^{Notice} shall forthwith cause notice to be given in writing to each registered person included in the entry who is alleged or suspected to have inflicted abuse upon a child,

- (a) that the person's name has been recorded in the register or that the person is otherwise identifiable from the register;
- (b) that the person or the person's agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) that the person is entitled to request the Director to expunge the person's name from the register or to have the register otherwise amended.

(13) A person to whom a notice is given under subsection 12 may request the Director to expunge from the register the registered person's name referred to in the notice or to otherwise amend the register. ^{Request for a hearing}

(14) Where the Director receives a request under subsection 13, the Director shall hold a hearing before deciding to refuse the request to expunge the registered person's name from the register or to refuse the request to otherwise amend the register, and the provisions of *The Statutory Powers Procedure Act, 1971* apply, with necessary modifications, to the hearing. ^{Hearing} 1971, c. 47

(15) A registered person to whom notice is given under subsection 12, the society that received the information concerning the registered person under subsection 1 or 2 of section 49 and such other persons as the Director may specify are parties to the hearing. ^{Parties}

(16) The Director shall cause notice of the hearing to be given to the parties to the hearing at least ten days before the hearing is held. ^{Notice}

(17) Where the Director, after holding a hearing, determines that the information in the register with respect to a ^{Decision of} Director

registered person should not be in the register or that the information is in error, the Director shall, subject to subsections 19 and 20, cause the registered person's name to be expunged from the register or otherwise cause the register to be amended, as the case may be, and the Director may order that a society's records be amended to reflect the Director's decision.

Delegation of
authority
to hold a
hearing

(18) The Director may authorize any other person to hold a hearing required under subsection 14 and where such person is authorized by the Director to hold the hearing, the person shall exercise the powers and duties of the Director under subsections 14 to 17.

Appeal

(19) Any person who is a party to the hearing may appeal the decision made pursuant to subsection 17 to the Divisional Court.

Decision of
Divisional
Court

(20) The Divisional Court may affirm the decision appealed from or may rescind the decision and refer the matter back to the Director or the person authorized by the Director under subsection 18, as the case may be, to be disposed of in accordance with such directions as the Divisional Court considers proper under this section, and the Director or the person authorized by the Director shall give effect to any direction given by the Divisional Court under this subsection.

Record of
proceedings
at hearing
inadmissible

(21) The record of proceedings in any hearing held under subsection 14 or in any appeal under subsections 19 and 20 is inadmissible in evidence in any other proceeding for any purpose except proceedings under clause *c* and subclause iv of clause *f* of subsection 1 of section 94. *New.*

Causing
child
to beg,
perform,
etc.

53.—(1) No person shall,

- (a) cause or procure a child to be in any place to which the public has access for the purpose of begging or receiving charity or of inducing the giving of charity whether under the pretence of singing, playing, performing, offering anything for sale or otherwise; or
- (b) subject to subsection 2, cause or procure a child to be in any place to which the public has access for the purpose of singing, playing or performing for profit or offering anything for sale between 9 o'clock in the afternoon of any day and 6 o'clock in the morning of the following day; or
- (c) subject to subsection 2, cause or procure a child to be at any time for the purpose of singing, play-

ing or performing for profit or offering anything for sale in any circus, theatre or other place of public entertainment to which the public is admitted by payment.

(2) In the case of an entertainment or series of entertainments to take place in premises used for public entertainment or in a circus, theatre or other place of public amusement, where it is shown that provision has been made to ensure the health and proper treatment of a child proposed to be employed thereat, the head of the council of the municipality where the entertainment is to take place may, with the approval of a society having jurisdiction where the entertainment is to take place, grant a licence for such time and during such hours of the day and subject to such restrictions and conditions as the head of the council thinks fit for any child who in the opinion of the head of the council is a fit and proper person to take part in such entertainment or series of entertainments, and the licence may at any time be varied, added to or revoked by the head of the council with the approval of the society.

Licence for
child to
perform in
public

(3) The head of the council may assign to the chief of police of the municipality or to some other person the duty of ensuring that the restrictions and conditions of any licence granted under subsection 2 are duly complied with, and the chief of police or such person, as the case may be, may enter, inspect and examine any place at which the employment of a child is for the time being licensed. R.S.O. 1970, c. 64, s. 42, *amended*.

Officer to
supervise
licence

54.—(1) Subject to subsection 2 of section 53, no person under sixteen years of age shall engage in any trade or occupation in a place to which the public has access between the hours of 9 o'clock in the afternoon and 6 o'clock in the morning of the following day.

Person under
sixteen in
public place

(2) No person under sixteen years of age shall loiter in any place to which the public has access between the hours of 10 o'clock in the afternoon and 6 o'clock in the morning of the following day or be in any place of public resort or entertainment during such hours unless accompanied by the person's parent or an adult appointed by the parent or in the case of a child in the lawful care or custody of a society, an adult appointed by the society to accompany that person.

Person
under
sixteen
loitering
in public
place
at night

(3) A person found contravening any provision of this section may be warned by a police officer, and, if the warning is not regarded or if, after the warning, the person is again found con-

Warning

travelling any provision of this section, the person may be taken by the police officer to the person's home or to a place of safety and where the person is taken to a place of safety, the person shall be brought before a court as if the person had been apprehended pursuant to section 21 or 22. R.S.O. 1970, c. 64, s. 43 (2-5), *amended*.

Presumption
as to
age of
child

55. Where a person is charged with an offence under this Part in respect of a child who is alleged to be under a specified age and the child appears to the court to be under that age, the child shall for the purposes of this Part be deemed to be under that age unless the contrary is proved. R.S.O. 1970, c. 64, s. 44.

Separate
place of
detention

56.—(1) A child who is charged with an offence or brought before a court under this Part shall not, before the child's trial or hearing, be confined in a place used for persons charged with crime. R.S.O. 1970, c. 64, s. 45 (1), *amended*.

Idem

(2) Provision shall be made for the separate detention of every such child prior to the child's trial or hearing by arrangement with a person or society willing to undertake the responsibility of such detention on such terms as are agreed upon, or by providing suitable premises entirely distinct and separated from the ordinary lock-up or correctional institution. R.S.O. 1970, c. 64, s. 45 (2); 1975, c. 1, s. 24, *amended*.

Idem

(3) A child lawfully in custody shall not be placed or allowed to remain in the company of adult prisoners. R.S.O. 1970, c. 64, s. 4 (3).

Place of
hearing

57.—(1) Where a hearing is held under this Part, except a hearing under section 52, whether upon an application or by way of trial or appeal, the hearing shall be held in premises maintained specifically for the purpose or in the private office of the judicial officer holding the hearing or in other suitable premises, but the hearing shall not be held in premises ordinarily used for hearings in criminal proceedings.

Exclusion
of
persons
from
hearing

(2) Where a hearing is held under this Part, whether upon an application or by way of trial or appeal, all persons shall be excluded from the hearing unless the judicial officer holding the hearing having regard to,

(a) the wishes and interests of the parties; and

(b) whether or not the presence of others at the hearing would be injurious to the emotional health of any child who is present at the hearing,

otherwise directs.

(3) Notwithstanding subsection 2,

Idem

- (a) a person acting as prosecutor in the proceedings and an agent of the Attorney General and of a Director; and
- (b) subject to section 33, a child who is a party to the proceedings, the child's parents, a representative of a society, a person acting on behalf of the child, a person acting on behalf of the society, a person acting on behalf of the child's parents and any other person entitled to notice of the hearing,

may be present at a hearing held under this Part.

(4) Notwithstanding subsection 2 and subject to subsection 5, representatives of the press, radio and television media not exceeding two in number as agreed upon by all such representatives who present themselves, may be present at a hearing under this Part, except a hearing under section 52, but the judicial officer holding the hearing may exclude any or all such representatives from all or any part of the hearing or may prohibit the reporting of all or any part of the case by such representatives who are present at the hearing where the judicial officer is of the opinion that the presence of the representative or representatives, as the case may be, at the hearing or the reporting would be injurious to the emotional health of any child before the court and the judicial officer shall give reasons for the exclusion. *Idem*

(5) Where the representatives referred to in subsection 4 who are entitled to be present at the hearing are unable to agree as to who shall be present at the hearing, the judicial officer holding the hearing may designate those representatives who are entitled to be present. *Idem*

(6) The presence at the hearing of more than two representatives of the press, radio or television media may be allowed by the judicial officer holding the hearing. *Idem*

(7) Where a hearing is held under this Part, whether upon an application or by way of a trial or appeal, no person shall publish or make public in respect of the proceedings any information that has the effect of identifying, *Publication*

- (a) any child or a parent or foster parent of the child or a member of the child's family present at the proceedings whether as a party, witness or otherwise; and

- (b) any person charged with an offence in the proceedings. R.S.O. 1970, c. 64, s. 46, *amended*.

Effect of
order of
court in
other
jurisdiction

58. Where, an order or orders are made by a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof that is prescribed in the regulations and such order or orders do not effect an adoption of the child according to the law of the jurisdiction where the order or orders were made, but the rights and responsibilities of guardianship in respect of a child have been legally vested by such order or orders in any person, organization, province, state or country or a legal representative of any of them, the order or orders so made shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

PART III

ADOPTION

Interpre-
tation

59.—(1) In this Part and Part IV,

- (a) “adoption agency” means a corporation without share capital having objects of a charitable nature,

R.S.O. 1970,
c. 89

- (i) to which Part III of *The Corporations Act* applies, or

- (ii) that is incorporated under a general or special Act of the Parliament of Canada,

and that places children under eighteen years of age for adoption and includes a society;

- (b) “licence” means a licence issued under this Act;

- (c) “relative of the child” means a grandparent, uncle or aunt of the child, whether the relationship is of whole blood, half blood or by marriage, and notwithstanding that the relationship is traced through or to a person born outside marriage or that the relationship depends on the adoption of any person. R.S.O. 1970, c. 64, s. 69, *amended*.

Idem

(2) In this Part, “child” means a person whether under eighteen years of age or eighteen or more years of age.

Licence
required

60.—(1) No person other than a society shall establish, operate or maintain an adoption agency except under the authority of a licence issued by a Director under this Act.

(2) Subject to section 61, any person who is a corporation without share capital having objects of a charitable nature, ^{Issuance of licence}

(a) to which Part III of *The Corporations Act* applies; ^{R.S.O. 1970, c. 89}
or

(b) that is incorporated under a general or special Act of the Parliament of Canada,

and who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain an adoption agency and pays the prescribed fee is entitled to be issued a licence by a Director subject to such terms and conditions as the Director may prescribe.

(3) Subject to section 61, a Director shall renew a licence of an adoption agency on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee, and the renewal shall be subject to such terms and conditions as the Director may prescribe. ^{Renewal of licence}

(4) Subject to section 61, where an applicant under subsection 2 or 3, as the case may be, for a licence or a renewal of a licence does not meet all the requirements for the issuance of a licence or renewal thereof and requires time to meet such requirements, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for such period or periods as the Director considers necessary to afford the applicant an opportunity to meet the requirements. ^{Provisional licence}

(5) The Director may, subject to such terms and conditions as the Director may prescribe, issue a licence to a person other than an adoption agency for the placement of a child under eighteen years of age with another person for the purpose of adoption. ^{Licence to person other than adoption agency}

(6) A licence is not transferable. ^{Not transferable}

(7) A licensee that is a corporation shall notify a Director in writing within fifteen days of any change in the officers or directors of the corporation. ^{Notice of change} *New.*

61.—(1) Subject to section 62, a Director may refuse to issue a licence where in the Director's opinion, ^{Grounds for refusal}

(a) any of the officers, directors or employees of the applicant are not competent to place children under eighteen years of age for adoption in a responsible

manner in accordance with this Act and the regulations;

- (b) an applicant for a licence under subsection 5 of section 60 who is not a corporation or any employee of the applicant is not competent to place a child under eighteen years of age for adoption in a responsible manner in accordance with this Act and the regulations; or
- (c) the past conduct of any of the officers, directors or employees of the applicant affords reasonable grounds for belief that any of them will not operate an adoption agency in accordance with this Act and the regulations.

Revocation
or refusal
to renew

(2) Subject to section 62, a Director may refuse to renew or may revoke a licence issued to an adoption agency or to a person referred to in subsection 5 of section 60 where in the Director's opinion,

- (a) any officer, director or employee of the licensee has contravened or has knowingly permitted any person under the control or direction of or associated with the officer, director or employee, as the case may be, to contravene,
 - (i) any provision of this Act or the regulations, or
 - (ii) any term or condition of the licence;
- (b) the licensee under subsection 5 of section 60 who is not a corporation, or any employee of the licensee has contravened or knowingly permitted any person under the control or direction of or associated with the employee, as the case may be, to contravene,
 - (i) any provision of this Act or the regulations, or
 - (ii) any term or condition of the licence;
- (c) any person has made a false statement in the application for the licence or renewal thereof, or in any report, document or other information required to be furnished by this Act or the regulations or by any other Act or regulation that applies to the adoption agency or the licensee under subsection 5 of section 60, as the case may be;
- (d) where the applicant is a corporation, a change in the officers or directors of the applicant would, if

the applicant were applying for the licence in the first instance, afford grounds for refusing to issue a licence under clause *c* of subsection 1; or

- (e) the adoption agency is operated in a manner that is prejudicial to the health, safety or welfare of the children being placed by the adoption agency for adoption. *New.*

62.—(1) In this section and in sections 63 and 65, ^{Interpre-}
 “Board” means the Children’s Services Review Board estab- ^{tation}
 lished under *The Children’s Residential Services Act, 1978*. ^{1978, c.}

(2) Where a licensee is dissatisfied with the terms and con- ^{Hearing}
 ditions prescribed by a Director under subsection 2, 3, 4 or 5 of
 section 60, the licensee may, within fifteen days after the licence
 is received by the licensee by written notice given to the
 Director and to the Board, require a hearing by the Board and
 the Board shall appoint a time for and shall hold a hearing.

(3) The Board, pursuant to a hearing under subsection 2, ^{Board may}
 may affirm the terms and conditions prescribed by a Direc- ^{impose}
 tor under subsection 2, 3, 4 or 5 of section 60 or may cancel ^{terms and}
 such terms and conditions or may prescribe such other terms ^{conditions}
 and conditions in lieu of those prescribed by the Director
 as it considers proper.

(4) For the purposes of subsection 2, a licence shall be ^{Receipt of}
 deemed to be received by a licensee on the tenth day after ^{licence}
 the day of mailing of the licence unless the person to whom
 the licence is issued establishes that the person did not
 receive it or did not, acting in good faith, through absence,
 accident, illness or other cause beyond the person’s control,
 receive the licence until a later date.

(5) Where a Director proposes to refuse to issue a ^{Notice of}
 licence under section 61 or to refuse to renew or revoke a ^{proposal}
 licence issued under that section, the Director shall cause ^{to refuse}
 notice to be served of the Director’s proposal, together with ^{to issue}
 written reasons therefor, on the applicant or the licensee, as ^{or to}
 the case may be. ^{revoke}

(6) A notice under subsection 5 shall inform the applicant ^{Notice}
 or licensee, as the case may be, that the applicant or ^{requiring}
 licensee is entitled to a hearing by the Board if the applicant ^{hearing}
 or licensee mails or delivers, within fifteen days after the
 notice is served on the applicant or licensee, notice in
 writing to the Director and to the Board requiring a hearing,
 and the applicant or licensee, as the case may be, may so
 require such a hearing.

Powers of
Director
where no
hearing

(7) Where an applicant or licensee does not require a hearing by the Board in accordance with subsection 6, the Director may carry out the proposal stated in the Director's notice under subsection 5 without a hearing.

Continuation
of licence
pending
renewal

(8) Where, within the time prescribed therefor or, if no time is prescribed, before expiration of a licence, a licensee has applied for renewal of a licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Board has made its decision. *New.*

Application

63. Sections 6, 8, 10 and 11 of *The Children's Residential Services Act, 1978* apply with necessary modifications to a notice under subsection 2 or 5 of section 62, to proceedings before the Board and to the powers of the Board under section 62 and to appeals therefrom. *New.*

Suspension
of licence

64. Notwithstanding section 62, a Director may, by causing notice to be served on an adoption agency or a licensee under subsection 5 of section 60, as the case may be, and without a hearing, provisionally suspend the licence of the adoption agency or the licensee where, in the opinion of the Director, the operation of the adoption agency or the licensee is an immediate threat to the health, safety or welfare of the children or child placed or to be placed by the adoption agency or the licensee, as the case may be, for adoption and the Director so states in such notice giving reasons therefor, and, upon suspension, the provisions of sections 62 and 63 apply as if the notice given under this section were a notice of a proposal under subsection 2 of section 62 to revoke the licence. *New.*

Child to be
placed by
licensee

65.—(1) No person other than an adoption agency or licensee under subsection 5 of section 60 shall,

(a) place or cause to be placed a child under eighteen years of age with another person; or

(b) take or send or attempt to take or send any child under eighteen years of age who is a resident of or who was born in Ontario, out of Ontario,

for the purpose of adoption.

(2) No person shall receive a child under eighteen years of age for the purpose of adoption without the prior approval of a Director under subsection 7. ^{Approval of Director required}

(3) Every adoption agency or licensee under subsection 5 of section 60 that proposes, ^{Notice to Director}

(a) to place a child under eighteen years of age; or

(b) to take or send a child under eighteen years of age who is a resident of or was born in Ontario, out of Ontario to be placed,

for the purpose of adoption, shall in advance of the placement notify a Director of the proposed placement.

(4) Subsections 1, 2 and 3 do not apply to, ^{Application}

(a) the placement of a child with a relative of the child or with the spouse of a parent of the child; or

(b) the taking or sending of a child out of Ontario,

(i) by a parent of the child for adoption by the spouse of the parent of the child, or

(ii) for placement of the child with a relative of the child for the purpose of adoption.

(5) Subsections 2 and 3 do not apply to the placement of a child by a society. ^{Idem}

(6) The Director shall forthwith after receiving a notice under subsection 3 obtain a report of a homestudy made by a person who, in the opinion of the Director or local director of a society, is qualified to make the homestudy of the person proposing to adopt the child. ^{Homestudy}

(7) The Director shall forthwith, after receiving the report of the results of the homestudy, approve the proposed placement for adoption or notify the adoption agency or the licensee under subsection 5 of section 60, as the case may be, and the person proposing to adopt the child of the Director's proposal to refuse approval of the placement and that the adoption agency or licensee and the person proposing to adopt the child are entitled to a hearing before the Board and the provisions of sections 6, 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to a notice under this subsection to proceedings before the Board and to powers of the Board. ^{Decision of Director, etc.} 1978, c. . . .

Supervision
of placement
by society

(8) Where the Director approves the proposed placement for adoption under subsection 7, the Director may direct a society, or in the case of a placement out of Ontario may arrange for a child protection agency recognized in the jurisdiction of the placement, to supervise the placement subject to such terms and conditions as the Director may prescribe. *New.*

Hearing

(9) Where the person proposing to adopt the child, the adoption agency or the licensee under subsection 5 of section 60, as the case may be, is dissatisfied with the terms and conditions prescribed by a Director under subsection 8, the person, the adoption agency or licensee, upon giving notice is entitled to a hearing before the Board and the provisions of sections 7, 8, 10 and 11 of *The Children's Residential Services Act, 1978* shall apply with necessary modifications to such notice to proceedings before the Board and to powers of the Board.

Powers of
Director
where no
hearing

(10) Where a person proposing to adopt the child, the adoption agency or the licensee under subsection 5 of section 60, as the case may be, does not require a hearing by the Board in accordance with subsection 7, the Director may carry out the proposal stated in the Director's notice under that subsection without a hearing.

Review by
Director

66. Notwithstanding subsection 3 of section 69, a Director, with or without the request of any person, may review the decision of any adoption agency or licensee under subsection 5 of section 60 to refuse to place a child with a person for the purpose of adoption by that person or to remove the child who has been placed with a person for the purpose of adoption and the Director may confirm the decision of the adoption agency or licensee, as the case may be, or rescind the decision and the Director may give such direction, make any further decision or take any further step that an adoption agency or licensee under subsection 5 of section 60 is authorized to make, give or take under this Act. *New.*

Prohibition
against
payments
for
adoptions

67.—(1) Subject to subsection 2, no person, whether before or after the birth of a child, shall make, give or receive or agree to make, give or receive a payment or reward for or in consideration of or in relation to,

- (a) the adoption or proposed adoption of the child under this Part;
- (b) the giving of consent or the signing of an instrument of consent to the adoption of the child under this Part;

- (c) the transfer of the custody or control of the child with a view to the adoption of the child under this Part; or
- (d) the conduct of negotiations or the making of arrangements with a view to the adoption of the child under this Part.

(2) Subsection 1 does not apply to the payment of expenses ^{Idem} of an adoption agency or licensee under subsection 5 of section 60 or the payment of legal expenses in connection with an adoption or proposed adoption under this Part. R.S.O. 1970, c. 64, s. 88, *amended*.

68. Every society shall endeavour to secure the adoption of Crown wards, having regard to the best interest of each Crown ward. R.S.O. 1970, c. 64, s. 86 (1). ^{Duty of society to secure adoption}

69.—(1) In this section, “parent” includes,

^{Interpretation}

- (a) a guardian;
- (b) a person who has demonstrated a settled intention to treat a child as a child of the person’s family; and
- (c) a person who is not recognized in law to be a parent of a child but,
 - (i) has acknowledged a parental relationship to the child and has voluntarily provided for the child’s care and support,
 - (ii) by an order of a court of competent jurisdiction or a written agreement, is under a legal duty to provide for the child or has been granted custody of or access to the child, or
 - (iii) has made a written acknowledgment of the fact of his or her parentage to the adoption agency or licensee under subsection 5 of section 60 placing the child for adoption,

but does not include the Crown, a society or a foster parent of a child. *New.*

Consent

(2) An order for the adoption of a child under eighteen years of age and who has not been married shall be made only with the written consent, given after the child is seven days old, of every person who is a parent or who has lawful custody or control of the child, but any person who has given his or her consent may cancel it by a document in writing to that effect within twenty-one days after the consent is given. R.S.O. 1970, c. 64, s. 73 (1, 2); 1971, c. 98, s. 4, Sched., par. 6, *amended*.

Rights and responsibilities

(3) Upon the giving of all the consents required under subsection 2, all the rights and responsibilities of a legal guardian of the child for the purpose of the child's care, custody and control belonging to the person or persons giving the consents shall, where the child is being placed for adoption by an adoption agency and, subject to subsection 11, transfer to, be vested in and be assumed by the adoption agency so long as the consents remain in force and until an adoption order is made.

Idem

(4) Notwithstanding subsection 3, the rights and responsibilities of a legal guardian of the child shall not transfer to an adoption agency until the twenty-one day period for cancellation of the consent given under subsection 2 has expired.

Idem,
Crown ward

(5) An order for the adoption of a child who is a Crown ward shall be made only with the written consent of a Director, in which case no other consent, except a consent required under subsection 6, is required. R.S.O. 1970, c. 64, s. 73 (3), *amended*.

Idem,
child and
where
married,
spouse of
child

(6) An order for the adoption of a child who is seven or more years of age shall be made only with the written consent of the child, and, where the child is married, with the written consent of the spouse except that the court may dispense with the consent of the child if the court is satisfied that, having regard to all the circumstances of the case, the consent would not be appropriate. R.S.O. 1970, c. 73 (4); 1975, c. 1, s. 31 (1).

Where
consent
not
given

(7) Where a consent required by this section has not been given, the court upon application by the applicant for the adoption may dispense with the requirement if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the requirement be dispensed with.

(8) The court shall not dispense with a consent required ^{Notice} under this section, except a consent required under subsection 6, until the court is satisfied that the person from whom the consent is required has had notice of the application for adoption and notice of the application to dispense with the consent, or that reasonable effort has been made, in the opinion of the court, to cause such person to be notified. R.S.O. 1970, c. 64, s. 73 (5, 6).

(9) Where a consent required by this section has been ^{Where consent given} given, it may after the twenty-one days referred to in subsection 2 and subject to subsections 10 and 11, be withdrawn by the person giving it only if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the consent be withdrawn. R.S.O. 1970, c. 64, s. 73 (7); 1975, c. 1, s. 31 (2).

(10) Subject to subsection 11, an application to the court ^{Consent not to be withdrawn} for the withdrawal of a consent given under subsection 2 shall not be made after the child has been placed for adoption by an adoption agency or licensee under subsection 5 of section 60 so long as the child remains in the care of the person with whom the child was placed for adoption.

(11) Where all the consents required under subsection 2 ^{Review by Director} have been given and, after the expiration of one year from the giving of the consents under subsection 2 or from a review of the child's status under this subsection, whichever is later, whether or not the child has been placed for adoption, an order for the adoption of the child has not been made, the adoption agency or licensee under subsection 5 of section 60, as the case may be, shall notify a Director and the Director or any person authorized by the Director shall review the status of the child and after such review the Director or such person, having regard to the best interests of the child, may,

- (a) where the adoption agency or licensee is not a society direct the adoption agency or licensee to place the child into the care and custody of a society designated by the Director;
- (b) where the child is in the care, custody and control of a society, direct the society to bring the child before the court under Part II to determine whether an order under section 30 should be made and thereafter the provisions of sections 28 to 36 apply, with necessary modifications, to the child.

- (c) where the child is in the care of the person with whom the child has been placed for adoption, confirm the placement of the child with that person or give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency or licensee is authorized to make, give or take under this Act;
- (d) where the child leaves or is removed from the care of the person with whom the child has been placed for adoption, give such direction, make any further decision or take any further step relating to the further placement of the child that the adoption agency or licensee is authorized to make, give or take under this Act; or
- (e) direct the adoption agency or licensee to return the child to the care of the person giving the consent under subsection 2 where that person had charge of the child at the time the consent was given and has agreed to receive the child back into care, and upon giving such direction, every consent to the adoption given under subsection 2 shall be deemed to be withdrawn.

Application
to judge

(12) Where an application is made to the court under Part II pursuant to clause *b* of subsection 11, the child shall be brought before the court as if the child had been apprehended pursuant to section 21 or 22 and the child may be dealt with by the court in the same manner as though the child were a child apparently in need of protection. *New.*

Consent not
invalid by
reason of
age

(13) No consent required by this section is invalid by reason only of the fact that the person giving it is under eighteen years of age except that, in the case of a consent required under subsection 2 given by a person under eighteen years of age the consent is not valid unless the Official Guardian is satisfied that the consent reflects the true informed wishes of the person. R.S.O. 1970, c. 64, s. 73 (8); 1971, c. 98, s. 4, Sched., par. 6, *amended*.

Interference
with
child, etc.

(14) Subject to a direction of a Director under subsection 11 to the child, no person shall,

- (a) visit, write to, telephone to, communicate with, remove or attempt to remove from any place, or

interfere with a child who has been placed for adoption by an adoption agency or licensee under subsection 5 of section 60; or

- (b) visit, write to, telephone to or communicate with, for the purpose of interfering with the child, a person or persons with whom the child has been placed for adoption,

after the giving of all the consents under subsection 2, and before an order for the adoption of the child has been made, without the consent in writing of the adoption agency or licensee, as the case may be.

(15) Upon the placement of a child under eighteen years of age by an adoption agency or licensee under subsection 5 of section 60 for the purpose of adoption, and upon the giving of all the consents required under subsection 2, any outstanding order of access with respect to the child, other than an order of access made under this Act, shall terminate. *New.* Termination
of access
order

70. An affidavit of execution in the prescribed form shall be attached to every consent required under this Part and to every cancellation under subsection 2 of section 69. R.S.O. 1970, c. 64, s. 74, *amended.* Affidavit of
execution

71.—(1) The court in the county or district in which either the applicant or the child sought to be adopted resides at the time the application for an adoption order is filed has jurisdiction to make the order. R.S.O. 1970, c. 64, s. 70 (1); 1975, c. 1, s. 29 (1), *amended.* Jurisdiction
of courts

(2) An application for an adoption order shall be heard and determined *in camera*. R.S.O. 1970, c. 64, s. 70 (2), *amended.* Application
to be heard
in camera

(3) Where the court referred to in subsection 1 is satisfied that there is preponderance of convenience in favour of hearing the application for adoption in another county or district, the court may, at any time after the application is made and before the hearing of the application, transfer the proceedings to a court in any other county or district. Transfer of
proceedings

(4) The court may accept evidence by affidavit but the affidavit shall be confined to facts within the personal knowledge of the person making the affidavit. *New.* Affidavit
evidence

(5) Where an application for an adoption order is not heard by the court within the twelve months next following Stale
applications

the signing of the application by the applicant, it shall not be proceeded with unless the court otherwise directs, but another application may be made in its stead. R.S.O. 1970, c. 64, s. 70 (3), *amended*.

Guardian
ad litem

(6) For the purpose of an application for an order for the adoption of a child under eighteen years of age, the court may appoint a person to act as the guardian *ad litem* of the child before or upon the hearing of the application if in the opinion of the court such appointment is required to protect the legal interests of the child in the proceedings and the court may make such order as to the costs of the guardian *ad litem* as the court deems appropriate in the circumstances. 1975, c. 1, s. 29 (2).

When order
may be
made

72. The court may make an order for the adoption of any child resident in Ontario upon application therefor being made in the prescribed manner by a person resident in Ontario. R.S.O. 1970, c. 64, s. 71, *amended*.

Where order
not to be
made

73.—(1) The court shall not make an adoption order for a child who is under eighteen years of age and who has not been married unless the child has been placed with an applicant for adoption by an adoption agency or licensee under subsection 5 of section 60.

Application

(2) Subsection 1 does not apply to an application for adoption of a child,

(a) by a relative of the child; or

(b) by the spouse of the child's parent. *New.*

Where order
not to be
made

74.—(1) The court shall not make an adoption order,

(a) where the applicant is under eighteen years of age or, in the case of a joint application by a husband and wife, where the husband or wife is under eighteen years of age;

(b) where the applicant is unmarried, a widow, a widower, a divorced person or living apart from his or her spouse; or

(c) where the child being adopted is eighteen or more years of age or is under eighteen years of age and has been married,

unless the court is satisfied that there are special circumstances that justify the making of the order. R.S.O. 1970, c. 64, s. 72 (1); 1971, c. 98, s. 4, Sched., par. 6; 1975, c. 1, s. 30 (1), *amended*.

(2) An adoption order shall not be made where the court has made a decision under subsection 7 of section 69 granting or refusing the dispensing of the requirement of the giving of consent until,

- (a) any appeal under subsection 3 of section 84 in respect of the decision has been disposed of; or
- (b) the time for commencing an appeal under subsection 5 of section 84 in respect of the decision has expired,

whichever is the later. *New.*

(3) Subsection 1 does not apply to an application for adoption of a child by a spouse of a parent of the child. 1975, c. 1, s. 30 (2), *amended*. Idem
Application
of subs. 1

(4) Except in the case of a joint application by a husband and wife, an order shall not be made for the adoption of a child by more than one person. R.S.O. 1970, c. 64, s. 72 (2). Adoption
by more
than one
person

(5) An adoption order shall not be made upon the application of a husband or wife without the written consent of the spouse, provided that the court may dispense with such consent where the spouses are living apart and where the court considers it in the best interests of the child that the consent be dispensed with. R.S.O. 1970, c. 64, s. 72 (3); 1975, c. 1, s. 30 (3), *amended*. Consent of
adopting
spouse

75.—(1) Where an application is made to the court for the adoption of a child who is under eighteen years of age and who has not been married, a Director shall file with the court prior to the hearing of the application a statement in writing, Statement
of Director

- (a) that the child has resided for six months or more with the applicant and, having regard to the best interests of the child, recommending whether or not, in the opinion of the Director, an order for the adoption of the child should be made; or
- (b) that the applicant is an appropriate person to adopt the child and recommending that for reasons set out in the statement it is in the best interests of the child that the period of residence be dispensed with and an order for the adoption of the child should be made,

and the Director, in making a recommendation under clause *a* or *b*, may bring to the attention of the court any additional circumstances of the case that, in the Director's opinion, the court may wish to take into account before making or refusing the order.

Filing of
notice

(2) Where a Director recommends that an adoption order should not be made, the Director shall file a copy of the statement under subsection 1 with the court at least thirty days prior to the hearing and the Director shall cause a copy of the statement to be served upon the applicant within seven days after the Director filed the statement with the court.

Statement
of local
director

(3) In the case of a child referred to in subsection 1 who has been placed for adoption by a society, the statement referred to in clause *a* of that subsection is sufficient if it is made by the local director.

Report

(4) A Director or local director before making a recommendation under subsection 1 shall obtain a report on the adjustment of the child in the home of the applicant made by the society with jurisdiction in the area where the applicant resides, or by such other person who has received prior approval from the Director or local director, as the case may be. 1975, c. 1, s. 32, *amended*.

Application

(5) Subsections 1 and 4 do not apply to an application for adoption of a child,

(a) by a relative of the child; or

(b) by the spouse of the child's parent,

unless the court hearing the application so directs. *New*.

Duty of
court

76. The court before making an adoption order shall be satisfied,

(a) that every person who has given a consent under this Part understands the nature and effect of the adoption order; and

(b) that the order will be in the best interests of the child. R.S.O. 1970, c. 64, s. 77.

Procedure
on
application

77. Upon the hearing of an application for adoption, where the child is seven or more years of age, the court shall inquire into the capacity of the child to appreciate the nature of the application and shall, where practicable, hear the child. R.S.O. 1970, c. 64, s. 76.

78.—(1) Subject to subsection 3, when making an adoption order, the court may order that the adopted child, ^{Surname}

(a) retain the surname by which the child was known immediately prior to the adoption; or

(b) assume the surname of either or both of the adopting parents.

(2) Subject to subsection 3, in an adoption order, the court may in its discretion change the given name or names of the child as the adopting parent desires, and thereafter the adopted child is entitled to and is to be known by the name or names so given. ^{Given names} R.S.O. 1970, c. 64, s. 78, *amended*.

(3) In the case of a child fourteen or more years of age, the court shall not make an order under this section changing the given name or the surname of the child without the written consent of the child. ^{Consent required} *New*.

79. If the adopted child was born outside marriage, that fact shall not appear upon the adoption order. ^{Born outside marriage not to appear} R.S.O. 1970, c. 64, s. 79, *amended*.

80.—(1) Subject to subsection 6 of section 81, the documents used upon an application for an adoption order shall be sealed up and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of a Director. ^{Papers to be sealed up}

(2) Within thirty days after the making of an adoption order, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit, ^{Transmission of order}

(a) the original order to the adopting parent;

(b) one certified copy to a Director;

(c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and

(d) where the adopted child is a member of a band within the meaning of the *Indian Act* (Canada), one certified copy to the Registrar under that Act. ^{R.S.C. 1970, c. 1-6} R.S.O. 1970, c. 64, s. 80, *amended*.

81.—(1) In this section, "Director" means an employee of the Ministry appointed by the Minister for the purposes of this section. ^{Interpretation}

Voluntary
disclosure
registry

(2) An adopted child who is eighteen or more years of age and a person who was a parent of an adopted child at the time of the child's birth where the adoption took place in Ontario in each instance may apply to a society to be registered in a voluntary disclosure registry that shall be maintained by the Director.

Society
to notify
Director

(3) Every society that receives an application under subsection 2 shall forthwith forward a copy of the application to the Director who shall enter the applicant's name in the voluntary disclosure registry.

Information
confidential

(4) Notwithstanding the provisions of any other Act, no person shall inspect, remove, disclose, transmit or alter or permit the inspection, removal, disclosure, transmission or alteration of information maintained in the voluntary disclosure registry established under subsection 2, except with the written permission of the Director.

Director to
determine
if both
parent and
child are
registered

(5) The Director shall upon entering an applicant's name in the voluntary disclosure registry examine the registry to determine,

- (a) where the applicant is an adopted child, if a person who was the child's parent at the time of the child's birth is named in the registry; or
- (b) where the applicant is a person who was a parent of an adopted child at the time of the child's birth, if the adopted child is named in the registry.

Idem

(6) Where the Director,

- (a) determines that both an adopted child and a person who was the child's parent at the time of the child's birth are named in the voluntary disclosure registry;
- (b) obtains from any living person who was the parent of the child after an adoption order with respect to the child was made, consent to the disclosure of information pursuant to this section; and
- (c) obtains a confirmation from each of the parties referred to in clause *a* that they agree to the disclosure of information pursuant to this section,

the Director shall forthwith forward to the appropriate society the information contained in,

(d) the documents referred to in subsection 1 of section 80; and

(e) the voluntary disclosure registry,

with respect to the adopted child and the person who was the child's parent and the society shall provide the information to the adopted child and the person who was the child's parent.

(7) Every society shall provide guidance and counselling to persons who may be registered in the voluntary disclosure registry referred to in subsection 2. *New.* Society to provide guidance and counselling

82.—(1) Upon an application for an adoption order, the court, after considering any recommendation made by a Director, may postpone the determination of the application and make an interim order giving the custody of the child sought to be adopted to the applicant for a period not exceeding one year by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the child and otherwise as the court thinks fit. R.S.O. 1970, c. 64, s. 81 (1); 1975, c. 1, s. 33 (1). Interim order

(2) An interim custody order is not an adoption order. Idem

(3) All consents required for an adoption order are necessary for an interim custody order, subject to a like power in the court to dispense with any such consent requirement. R.S.O. 1970, c. 64, s. 81 (2, 3). Consents

(4) Where an applicant has obtained an interim custody order and subsequently takes up residence outside Ontario, the court may nevertheless make the adoption order applied for if a Director makes a recommendation in favour of the order under section 75. R.S.O. 1970, c. 64, s. 81 (4); 1975, c. 1, s. 33 (2). Residence outside Ontario

83. Subject to section 84, an order granting an adoption shall be final and irrevocable and shall not be questioned or reviewed in any court of competent jurisdiction by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review. *New.* Order final

84.—(1) An applicant for an adoption order, or a Director or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, may appeal to the county or district court of the county or Appeal

district in which the decision was made from the decision granting or refusing an adoption order.

Idem

(2) An applicant for an adoption order, a Director, or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, or a person who has given consent under subsection 2 of section 69 may appeal to the county or district court of the county or district in which the decision was made from the decision of the court made pursuant to subsection 9 of section 69, granting or refusing the withdrawal of a consent to the adoption.

Idem

(3) An applicant for an adoption order, a Director, or the local director, as the case may be, who has filed a statement pursuant to subsection 1 of section 75, a person who has given consent under subsection 2 of section 69 or a person with respect to whom a consent required under subsection 2 of section 69 has been dispensed with may appeal to the county or district court of the county or district in which the decision was made from the decision of the court made pursuant to subsection 7 of section 69, granting or refusing the dispensing of the requirement of the giving of consent.

Appeal
in camera

(4) An appeal under subsection 1, 2 or 3 shall be heard *in camera* and notice of the appeal shall be served on a Director.

Notice

(5) A notice of appeal under subsection 1, 2 or 3 shall be served within thirty days of the making of the decision being appealed and no extension of the time for serving the notice or making the appeal shall be granted. *New.*

Effect of
order on
previous
adoption

85. An adoption order or an interim custody order may be made in respect of a child who has previously been the subject of an adoption order, and the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the child for the purposes of this Part. R.S.O. 1970, c. 64, s. 82.

Status of
adopted
child

86.—(1) For all purposes, as of the date of the making of an adoption order,

- (a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was his or her parent before the adoption

order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adopting parent,

as if the adopted child had been born to the adopting parent and all the rights and responsibilities of a legal guardian of the child that have vested in any adoption agency pursuant to subsection 3 of section 69 are terminated. R.S.O. 1970, c. 64, s. 83 (1), *amended*.

(2) The relationship to one another of all persons whether the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made, the kindred of that former parent or any other person shall, for all purposes, be determined in accordance with subsection 1. R.S.O. 1970, c. 64, s. 83 (2).

Application
of subs. 1
to relation-
ship of
persons

(3) In any will or other document, whether heretofore or hereafter in existence, and whether or not the maker of the will or other document was alive at the date of the coming into force of this section, unless the contrary is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of the person's own adoption or the adoption of another person. 1975, c. 1, s. 34 (1), *amended*.

References
in will or
other
document

(4) This section applies and shall be deemed to have always applied with respect to any adoption made under any legislation heretofore in force, but not so as to affect,

Application
of section

(a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and

(b) any interest in property or right that has indefeasibly vested before the coming into force of this section. 1975, c. 1, s. 34 (2).

(5) Subsections 1 and 2 do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove any person from a relationship in consanguinity that, but for this section, would have existed. R.S.O. 1970, c. 64, s. 83 (4).

Exception

87.—(1) An adoption effected according to the law of any other province or territory of Canada or of any other state

Effect of
adoptions
under other
laws

or country or part thereof, before or after the commencement of this section, has the same effect in Ontario as an adoption under this Act. R.S.O. 1970, c. 64, s. 85.

Idem

(2) Where, as a requirement of the making of an order or orders of a court of competent jurisdiction in any other province or territory of Canada or in any other state or country or part thereof, that effects an adoption of a child according to the laws of the jurisdiction where the order or orders were made, any statement, consent, declaration or similar document in writing is made by a person, organization, province, state, country or legal representative of any of them, in whom the rights and responsibilities of guardianship in respect of the child have been legally vested, such statement, consent, declaration or similar document in writing shall for all purposes in Ontario have the same force and effect as if made under this Act. R.S.O. 1970, c. 64, s. 47, *amended*.

Subsidies

88. Where, in the opinion of the Minister, the best interests of a child may be served by granting a subsidy to the adopting parent of the child, the Minister may out of moneys appropriated therefor by the Legislature authorize payments, from time to time and upon such terms and conditions as the Minister may prescribe, of such amounts as are necessary for such purposes. *New*.

PART IV

GENERAL

Regulations

89.—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing additional powers and duties of a Director;
2. prescribing the records that shall be kept by societies and the returns and reports that shall be made by societies under this Act;
3. requiring societies to provide such information and to make such returns and reports as are prescribed and prescribing the persons or agencies to whom such information and returns are to be given and reports are to be made;
4. governing the qualifications of persons or classes of persons employed by or involved in the management and operation of societies;

5. prescribing provisions to be included in the by-laws of societies;
6. defining "net expenditures";
7. prescribing expenses that may be charged for services under this Act and classes of such expenses and the terms and conditions under which any such expense or class thereof may be charged;
8. prescribing the manner of determining the proportion of an approved estimate that is referable to each municipality in the area served by a society for the purposes of subsection 6 of section 8;
9. prescribing additional powers and duties of a child welfare review committee appointed under section 12;
10. determining the amounts of payments under subsections 1 and 2 of section 13 and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
11. providing for payments to reimburse a municipality for all or any part of any increase in its financial obligations to a society under this Act and prescribing classes of such payments and the terms and conditions under which any such payment or class thereof may be paid;
12. determining the costs to municipalities and to societies for the purposes of section 14;
13. determining the amounts of payments to be made to municipalities and societies under section 14 and providing for classes of such payments and the terms and conditions under which such payments or class or classes thereof may be made;
14. prescribing the times and manner of payment of capital grants under section 14;
15. prescribing "special needs" of children,
 - i. for which joint facilities may be established under section 16, and

ii. for the purpose of subsection 4 of section 25;

16. prescribing terms and conditions to be included in any agreement or class of agreement entered into under section 25;
17. for the purposes of subsection 9 of section 25, prescribing the manner of determining the nature and degree of a developmental handicap that would render a child incapable of consenting to an agreement made under that section;
18. governing the construction, alteration, renovation, extension and furnishing and equipping of homes operated or supervised by societies and providing residential care for children, other than children's residences under *The Children's Residential Services Act, 1978*;
19. prescribing the information that shall be recorded in the register established under subsection 3 of section 52;
20. prescribing the period or periods of time that information or any class thereof shall be maintained in the register established under subsection 3 of section 52 and providing for the expunging of information or any class thereof from the register;
21. prescribing the practice and procedure of the court under this Act or any Part thereof;
22. fixing fees, costs, charges and expenses payable on proceedings under this Act or any Part thereof and providing for dispensing with the payment of such fees, costs, charges and expenses where, owing to lack of means or for any other reason, the court considers such action advisable;
23. prescribing rules and standards governing the establishment and operation of adoption agencies;
24. governing the issuance, renewal and expiration of a licence required under section 60 and prescribing terms and conditions for the issuance, renewal and expiration of licences;
25. prescribing the fees payable by an applicant for a licence or renewal thereof;

26. providing for the inspection of books of account and other records of adoption agencies or licensees under subsection 5 of section 60;
27. governing the qualifications of persons or classes of persons employed by or involved in the management and operation of adoption agencies or licensees under subsection 5 of section 60;
28. requiring adoption agencies or licensees under subsection 5 of section 60 to provide such information and to make such returns and reports as are prescribed and prescribing persons or agencies to whom such information and returns are to be given and reports are to be made;
29. requiring the bonding of,
 - i. adoption agencies or licensees under subsection 5 of section 60, and
 - ii. the employees of adoption agencies or licensees under subsection 5 of section 60,
 or any class thereof, and providing for the forfeiture of the bond and the disposition of the proceeds thereof;
30. prescribing the form and term of bonds that are required and the collateral security that may be required with the bonds;
31. prescribing the records that shall be kept by adoption agencies or licensees under subsection 5 of section 60 and the returns and reports that shall be made by adoption agencies or licensees under this Act;
32. prescribing states and countries for the purposes of section 58;
33. prescribing forms and providing for their use;
34. prescribing the practices and procedures on appeals to the county or district court under sections 43 and 84. R.S.O. 1970, c. 64, s. 89; 1971, c. 109, s. 7; 1975, c. 1, s. 37 (1-6), *amended*.

(2) The Minister shall prescribe,

Idem

- (a) standards of services relating to the purposes set out in subsection 2 of section 6; and

- (b) procedures and practices to be followed by societies. *New.*

Inter-
provincial
agreements

90. The Minister, with the approval of the Lieutenant Governor in Council, may on behalf of the Government of Ontario make agreements with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services to or the care or protection of children. *New.*

Service

91.—(1) Unless otherwise provided for in this Act or the regulations, any notice or order required to be given, delivered, filed or served under this Act or the regulations is sufficiently given, delivered, filed or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the person's last known address.

Idem

(2) Where service is made by mail, the service shall be deemed to be made on the tenth day after the day of mailing unless the person on whom service is being made establishes that the person did not receive it or did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date.

Idem

(3) Where any notice is required to be given, delivered, filed or served on a Director under this Act or the regulations or a certified copy of an order is required to be transmitted to a Director under clause *b* of subsection 2 of section 80 such notice or certified copy is sufficiently given, delivered, filed, served or transmitted, as the case may be, on or to a Director if the notice or certified copy is given, delivered, filed, served or transmitted on or to any of the Directors appointed pursuant to subsection 1 of section 2. *New.*

Reference
to parent

92. Except for section 25, a reference in this Act or the regulations to "a parent" or "the parent" shall be deemed to be a reference to every parent of the child unless the context otherwise requires. *New.*

Giving
of notice

93. Where any notice required in proceedings under this Act has not been given, the court may proceed to hear or dispose of the matter as if such notice had been given where the court is satisfied that reasonable effort has been made to cause such notice to be given. *New.*

Offences

94.—(1) Every person who,

- (a) knowingly furnishes false information in any application under this Act or in any statement, report or return required to be furnished under this Act or the regulations;
- (b) fails to comply with an order of the court under subsection 4 of section 35;
- (c) fails to comply with an order made by a Director under subsection 17 of section 52;
- (d) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with any person acting in the performance of the person's duties under section 21, 22 or 23;
- (e) is a parent and who permits his or her child to contravene any provision of subsection 1 or 2 of section 54;
- (f) contravenes any provision of,
 - (i) section 46,
 - (ii) subsection 2 of section 49,
 - (iii) subsection 3 of section 50,
 - (iv) subsection 4, 7 or 8 of section 52,
 - (v) subsection 1 of section 53,
 - (vi) subsection 14 of section 69,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation or in such furnishing of false information, failure, hindrance, obstruction or interference or attempted hindrance, obstruction or interference or contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or, except for a contravention of subsection 2 of section 49, to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes the provisions of,

Idem

- (a) subsection 2 of section 47; or
- (b) subsection 1 or 2 of section 65,

and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corpora-

tion is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) Every person who contravenes the provisions of subsection 1 of section 48 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both, and for any subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(4) Every person who contravenes the provisions of subsection 1 of section 60 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 for each day on which such offence continues or to imprisonment for a term of not more than three years, or to both.

Idem

(5) Every person who contravenes the provisions of subsection 1 of section 67 and every director, officer or employee of a corporation who knowingly concurs in such contravention by the corporation is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three years, or to both.

Idem

(6) Every person who contravenes subsection 7 of section 57, and every director, officer or employee of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of an offence and on summary conviction by the court is liable to a fine of not more than \$10,000, or to imprisonment for a term of not more than three years, or both. *New.*

Injunction
proceedings

95.—(1) The society having the care, custody or supervision of the child may apply to the Supreme Court by originating notice for an order enjoining any person acting in contravention of section 46, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

Idem

(2) The adoption agency that placed the child for adoption may apply to the Supreme Court by originating notice for an

order enjoining any person acting in contravention of subsection 14 of section 69, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

(3) A Director may apply to the Supreme Court by ^{Idem} originating notice for an order enjoining any person acting in contravention of subsection 1 of section 60, and the Supreme Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgement of the Supreme Court.

(4) Any person may apply to the Supreme Court for an ^{Idem} order varying or discharging any order made under subsection 1, 2 or 3. *New.*

96. The following are repealed:

Repeals

1. *The Child Welfare Act*, being chapter 64, of the Revised Statutes of Ontario, 1970.
2. *The Child Welfare Amendment Act, 1972*, being chapter 109.
3. *The Child Welfare Amendment Act, 1973*, being chapter 75.
4. *The Child Welfare Amendment Act, 1975*, being chapter 1.
5. Paragraph 6 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98.

97. This Act comes into force on a day to be named by ^{Commence-} proclamation of the Lieutenant Governor. ^{ment}

98. The short title of this Act is *The Child Welfare Act*, ^{Short title} 1978.

An Act to revise
The Child Welfare Act

1st Reading

June 8th, 1978

2nd Reading

June 19th, 1978

3rd Reading

December 12th, 1978

THE HON. KEITH C. NORTON
Minister of Community and
Social Services



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